

Walking Access Consultation Submission Form

You can use this form to make a submission to the Walking Access Consultation Panel.
Copies of this form can be downloaded from www.walkingaccess.org.nz

Send your submission to:

Walking Access Consultation Panel
PO Box 2526
Wellington

Email: info@walkingaccess.org.nz

Fax: (04) 819 0745

Submissions close on 30 June 2006, so please make sure your submission reaches the Panel by then.

All submissions are subject to the Official Information Act 1982, which specifies that information is to be made available unless there are grounds for withholding it. If you wish your submission or any part of it to be withheld, please indicate the grounds in the Official Information Act that apply. The Ministry of Agriculture and Forestry, which will hold the submissions on behalf of the Panel, will take your request into account when determining whether or not to release information. Please note that any decision by the Ministry of Agriculture and Forestry to withhold information is reviewable by the Ombudsman.

Your details

Name:

Position:

Organisation:

Address:

Email:

In this submission, recommended changes are shown as follows. Comments are shown in *italics*. Additions are shown underlined, while deletions are shown in ~~strikeout~~.

Questions

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?

The aim is supported, with the following modifications:

Aim: That New Zealanders have “fair and reasonable access on foot along the coastline, ~~and significant~~ rivers, around lakes and to public land”.

The omission of public land from the aim appears to have been an oversight, and needs to be incorporated. This is also included, as appropriate, in the principles espoused below. Organisations with interests in public access other than on foot, eg mountain bikes, 4WD, kayaking, with guns and dogs, wish to advise that, as a minimum, their current rights and interests are not adversely affected by any proposals to improve foot access.

Principles

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

The principles are supported, with the following modifications:

1. *“Quality access means it should be free, certain and enduring*
 - a. *Free – that is, the public should be able to access for recreational purposes without charge those areas that are designated as being open to access.*
 - b. *Certain – both the public and land holders expect legal certainty over the ability of the public to access water margin and other public land.*
 - c. *Enduring – the legal right of access should be enduring over time.*

2. *Respect for property and the environment*

Persons exercising a right of access to land should take proper care of the environment and not interfere with private or public property or activities.

3. *Information on access should be readily available*

The public and landholders should be able to access information, including maps, about land that is open to recreational use by the public and access thereto. This information should be easy to obtain and useful.

4. Lost access should be reinstated, provided it can be done in a fair way

Restoring reservations to water margins and to public land should be pursued.

5. New access should be established, preferably by negotiation and agreement.

New access along and to water margins and other public land is to be established preferably by negotiation and agreement.”

These principles, as amended, are supported and should be the basis for the establishment of an Access Agency, as discussed further below.

Information about access rights

3 What information should be included in a mapping database?

Existing areas of publicly accessible land should be covered in the database, including but not limited to Crown Land, Crown Forestry licences, pastoral leases or other such Crown land with marginal strips or access agreements or similar noted on titles or in lease agreements (eg as subject to Part IV of the Conservation Act); public land owned or administered by the Department of Conservation, public agencies or local authorities (including, but not limited to, National Parks, Reserves, Conservation lands, public roads (whether formed or not), fee simple lands, public leases etc); marginal strips (whether noted on titles or surveyed); esplanade provisions, including reserves, strips and access strips; walkways, covenants or similar agreements which may exist providing rights of public access over private land.

Any areas of private land where access has been negotiated to the public, where appropriate, should also be included.

It would be easiest to make these available both as paper maps (downloadable as pdf files from the internet or available from book shops, retail outlets, information centres etc at a catchment scale of roughly 1:30 000 to 1: 100 000 scale). Ultimately these could be indicated on the NZMS 260 1:50 000 topographical map series. More detailed maps could be available via the internet (up to 1:10 000 scale) with lines of recommended access and other relevant information (including cadastral boundaries where appropriate) superimposed upon ortho-corrected aerial photos. The latter would be more expensive to produce and so be available only from specialist agencies at a higher cost, unless downloaded from the internet.

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

Paper maps are useful to orient and provide basic information suitable for most public uses. Occasionally it may be necessary for individuals to research or investigate in more detail, as suggested above with appropriate aerial photos. As a matter of course, such detailed maps should be made available in each area at no cost to landowners who have agreed appropriate ensuring access to the satisfaction of an access agency.

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

See comments above.

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

Signposting

7 Is signposting necessary at all?

Yes, in most cases signposting is extremely helpful, as it helps confirm information on maps and also enables use of areas by those lacking maps.

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

In general, signposts should facilitate what people are allowed to do. There has been an unfortunate tendency for local and roading authorities to mark areas to which there is no public access, thereby undertaking the opposite of their statutory function to facilitate access. A standard design of access provision is appropriate, which can be recognised throughout the country. The Fish and Game access signs have been helpful in this regard, by way of example. If access is generally improved there may be less need to provide specific signs, as they signs cost time & money.

9 Who should be responsible for signposting?

The Access agency should have responsibility in general, although if appropriate, other agencies could also contribute. Where public agencies have responsibilities for access or the public land in question, they should also contribute. Where these agencies refuse to make such contribution, this should be recorded by the Access Agency. It would be desirable to have a national standard symbol or colour scheme, perhaps with the opportunity to add any other symbol or acknowledgement of contribution by another agency where appropriate.

10 Who should bear the cost of signposting?

The cost could be borne by the public agency concerned, where relevant, or the access agency. It should not be borne by the landowners adjacent, or where there is provision of access across private land.

Code of responsible conduct

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

The Code of Conduct should relate to access across private land as well as to public land. Different provisions might apply, however, to public land, where there may be different rights and responsibilities of or for members of the public. It might be quite appropriate to carry firearms on public land, for example, but only with permission, or if unloaded and covered, on private land, for example.

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?

Yes, particularly for access across private land. This is the approach used with access provision in Scotland, for example.

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?

Promotion of good behaviour, clarification of existing laws etc is all worthwhile but may not be sufficient. Once again the means by which matters can be enforced would need to be considered in some detail, but this has been achieved elsewhere.

Access agency

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

The principal purpose of an Access Agency should be to give effect to the aim and principles of public walking access as set out above.

The agency would need to have the characteristics noted on p 55 of the Acland II document, including:

- *Visibility*
- *Independence*
- *Accountability*
- *Focus*
- *Capacity for leadership, plus the additional proposal of*

- Authority and resources to carry out, or require the carrying out, of its function.

The mandate would include to:

- *Advocate achievement of the aim and principles to all levels of government and across society*
- *Review at a national level and recommend any amendment to legislation to better achieve the aim and principles*
- *Have regional capability and/or resources to support access initiatives by recreational groups and/or land holders and provide oversight of implementation of the aim and principles by statutory agencies.*
- *The ability to support negotiations, or, if necessary, take access issues or disputes to an independent (possibly existing) tribunal for resolution*

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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.

Our preference is for a Commissioner accountable to Parliament. The Access Agency does not need oversight of appointed representatives, but instead needs a clear mandate to implement the aim and principles as stated above in this submission. It would best be a statutory body independent of the government of the day, preferably responsible via a commissioner to Parliament. It would need adequate resources to have a small body for oversight based centrally, but to enable it to undertake its task in the regions, perhaps by way of contracted employees or agencies rather than permanent staff.

A major component would be the initial liaison and mapping tasks, which would need considerably more set up resources to categorise and develop information in liaison with local authorities as set out below. Once these were completed, review of access arrangements could be undertaken in regions on a rolling 5-yearly basis.

Another task of the Access Agency would be to draw up appropriate policies for access in local authorities planning documents, and ensure that these, and subsequent consent processing, properly takes into account the necessary provision of public access to the outdoors as required in legislation.

Many of the ongoing or day to day task could be delegated to appropriate contractors, including private bodies or trusts, agencies such as local authorities, Department of Conservation or Fish and Game Councils or similar bodies, where these could show to the satisfaction of the Access Commissioner that they had the credentials and capability to carry out the necessary access functions.

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.

It is noted that at its core, disputes may arise over a failure to amicably resolve an access arrangement which impinges on the property rights of the public and private land owners. While these are best resolved for walking access through negotiation, there may be some occasions when negotiation fails or is refused. The Trespass Act is draconian, but still relatively ineffective at meeting the reasonable needs of landowners and is not intended to provide for reasonable public access.

Some mechanism is required for dispute resolution in the event of a failure of negotiation. A preferable approach would be to enable the Access Agency, or if appropriate, other agencies or individuals, to take such matters to a (preferably existing) quasi-judicial body with powers to decide such matters. Similarly, an agency would need to take action, or cause action to be taken, in the case when members of the public have acted inappropriately or breached the code of conduct. In order to meet the needs of both parties, the outcome of the process must be binding. Merely to mediate, where one or other party knows that it can hold out and not be required to address the legitimate concerns of the other party, will not achieve the stated aim and principles as recommended.

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

See above.

Property rights

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

As stated above, there are two sets of property rights in respect of walking access; private property rights and public rights as summarised by the provision of public lands, the 'Queen's Chain', water, fisheries and wildlife. Resolution of issues arising from the intersection of these rights is the basic reason for the establishment of the Walking Access Panel and subsequently the Access Agency, which is supported. The mandate of the Access Agency should include both the provision of access where it can be negotiated

as a first priority, but to respond where necessary where there are disputes over access in order to achieve resolution as appropriate to the aim and principles for access.

Achieving the right balance between public and private property rights is essential. Land ownership is not absolute; the Queen's Chain exists in many areas, there are plenty of unformed public roads and water, fisheries and wildlife do not attach to the title in New Zealand as they do in other countries. The public expects reasonable access to their own resources, while recognizing legitimate private property interests where these exist.

The stated taskforce aim and principles recognise the legitimacy of public property rights and the rights of landowners are generally well known. Some landowner interests have consistently failed to acknowledge or recognise any public property rights, however.

The essential question is whether landowners should be able, as at present, to deny access across or adjacent to their property as they see fit. If so, there is no improvement on the status quo and the issue has been addressed. If this is the outcome of this process, it would have failed the legitimate interests of the recreating public.

Realignment of displaced water margin access

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

Yes, this may be necessary where it would meet the stated aim and principles for access. Better still, however, is to negotiate practical walking access to the water body or public land in question in a way to the satisfaction of the adjacent landowner interests. Please note that practical walking access may involve the identification and provision of areas to park vehicles safely, the necessary signs or track markers, stiles etc.

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

In short, no. This is where practicality makes any strict adherence to the letter of the law a nonsense. There are some suggestions made elsewhere in this submission as to means of rationalising private and public property rights. In most cases this would be a major task, which can be avoided if there is negotiation in good faith about practical walking access.

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;

This is the most straightforward and appropriate method of enhancing practical walking access and should always be the primary method of improving access. Where it is provided, it needs to be recorded so that the clear understandings of all parties can be seen.

- 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;

This would be an appropriate long-term solution and should be encouraged where the access is otherwise on a 'grace-and-favour' arrangement. Such mechanisms already exist under the Walkways Act, but have not been used in the best part of 20 years as there is no Crown agency analogous to the former Lands & Survey Department which has surveyors and draughtspeople able to draw up the necessary documentation. This is an expensive process and is no longer serviced by a Walkways Commission or local Walkways Committees. A more straightforward process than formal survey would be more appropriate, provided this is enduring and certain. This is a matter which an Access Agency could research, with a view towards making recommendations if necessary to achieve a low cost enduring solution for walking access where there is negotiated agreement.

- establishment of esplanade reserves or strips on subdivision;

These should be supported as a matter of course. Regrettably there are still many Councils which routinely waive or reduce public rights of access on subdivision to important water bodies despite the clear intent of legislation to facilitate public access. Where the discretion is available to Councils, they are able to use it in ways which does not facilitate public access. The Access Agency should be able to ensure that appropriate provisions are in District Plans, appeal inappropriate Council decisions or draw up a National Policy Statement to give effect to the provisions of Part 6(d) of the Resource Management, to ensure that there is consistency across the country in the provision of public access.

- the acquisition of the land or easements over the land by or on behalf of the Crown;

Once again an Access Agency could cause this function to be addressed by the appropriate public agency.

- the scrutiny of acquisitions of land by overseas persons as provided by the Overseas Investment Act 2005;

As above, oversight of the public access aspects of this function could be a function of the Access Agency.

- any other process or mechanism you believe is appropriate.

Negotiated access

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

- monetary payment;

It is difficult to understand what there would be payment for, as access is being sought to public resources. This question relates to property rights. In many cases it raises a question of who should be compensated for what. Unformed public roads, for example, bisect many properties and landowners frequently graze, grow crops or trees on these without payment of rates or leases, or sometimes even fail to adhere to the quite specific case law over the rights of the public to traverse these areas. Similarly use of water by landowners with water permits does not involve any more than a transaction cost for the use of the public resource. It is unlikely that those who are seeking compensation are suggesting that they should pay for their use of public resources. Transaction costs of access over private land, where these arise, however, should be met by the Access Agency.

The Government has not ruled out compensation where there is demonstrable loss. It is imperative that the basis for any compensation does not imply that reasonable uses of land by private landowners include capture of the public interest aspects, such as access to public land, use of fisheries, wildlife or water, or to non-grazing parts of pastoral leases. It is difficult to imagine what losses might be made in the event of walking access being provided.

It will be important to set out what, if any, rationale might be used if compensation was to be considered. Compensation could be payable only for demonstrable loss to or use of any property right, which would not necessarily be restricted to loss to private property owners. For this reason, it would not normally be viewed as an appropriate consideration in any negotiated access arrangement, as most landowners would find the suggestion that they should compensate for use of public resources unhelpful at best. This would not include any costs of facilitating access, such as by the provision of signs or stiles, which should not be borne by the landowner, but by the Access Agency or a public body. In our view it would be rare and exceptional for walking access to result in demonstrable loss of a kind that ought to attract compensation.

- rates relief;

This could be an incentive to provide access in some cases, although local authorities may have a different perspective. The transaction costs may also be very high in relation to the benefit. This would be an option which the local authorities could choose if they saw fit. Few rural councils would be likely to use this method voluntarily. Even now, many rural councils use the costs of future management as a reason not to grant esplanade provisions on subdivision, or identify unformed legal roads.

- provision of fencing, signage and/or maintenance;

As discussed above, this could be the responsibility of the Access Agency to encourage/provide these in the case of private land, where necessary. In the case of public land, the Access Agency would encourage the appropriate authority to make the necessary provisions, and to record a failure to provide adequately in any reporting to Parliament.

- provision of facilities such as toilets and car parking;

See comment above.

- ability to close or restrict access at certain times;

This would be acceptable in liaison with and with the agreement of the Access Agency. It would be acceptable to limit access for short periods to enable activities such as crop harvest, logging etc. Where there was evidence that a temporary restriction on public access had been sought and then access provided to a select few or paying visitors, this could be grounds to refuse a similar request for a restriction on public access in the future.

- ability to shift the route if necessary;

Once again this would be able to be amended after reference to the Access Agency, as a matter of ongoing liaison and negotiation. A distinction could be made between temporary and permanent changes.

- removal of any liability to persons exercising access;

This is appropriate, and would be supported by recreational users. Agreement to provide free walking access to or along public land or water bodies should eliminate any liability on the part of landowners. When charges are made, however, landowners would retain liability.

- the ability to “trial” the right of access before deciding;

This may be an appropriate response where there were particular concerns which may need to be the subject of review. It does beg the question, however, of the grounds under which walking access might subsequently be denied at a later time. As discussed elsewhere, the trial would not be over whether access should be provided, but how. This could be amended if the particular method of access provision caused difficulty.

- indemnity for damage caused by a user;

This should be addressed in a similar way to liability, in that users acting in terms of the code of conduct could be indemnified against damage.

- the establishment of a code of responsible conduct;

This should be the responsibility of the Access Agency, in conjunction with interested parties. The proposal originally suggested by Federated Farmers would be a good starting point.

- other (please describe).

Negotiation on a case by case basis is usually supported, but the basis for the negotiation needs to be clearly specified. The issue is how to achieve the objective of walking access, not whether this is a valid objective. In other words, the negotiating parties must both be in a position where the primary objective of access provision is not able to be 'traded away'. In particular, where the negotiation includes any changes to public road provisions, any new access created should not have lesser rights available to the public than was available on road. This is particularly important to recreationists seeking access to areas of public land with vehicles, guns and/or dogs.

Furthermore, in negotiation, the option of a refusal to negotiate is unacceptable as this would not achieve the objective. If either party refuses to negotiate that should leave open the option for a decision to be made without that party's involvement. In other words, negotiation should be the preferred option for all parties to achieve an enduring and equitable result. Please note that while negotiation is a practical approach, it will not necessarily bind a future owner, so there is some necessity to follow up with some more enduring means of ensuring access.

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?

Yes

These provisions are still appropriate, but the triggers which establish them need to be widened to include changes in ownership, intensification of land use (others??). In addition, there should be less discretion to waive esplanade provisions, or the public access aspects of these. The proposed arrangements for negotiated access do not substitute for esplanade reserve provisions, but complement them.

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. One improvement would be to enable the consideration of access strips as part of possible development impact levies or similar mechanisms on activities other than subdivision or in relation to other land use changes or when other consents are sought, as discussed above and use these to enable foot access in many more cases. Local

authorities could be encouraged to identify routes where land use changes would result in walking access being provided.

Another improvement would be to make esplanade reserves able to move as marginal strips do, by enabling them to be registered on titles rather than requiring survey. It is important that this process is appropriately recorded and the Access Agency is advised. This would reduce the costs of the establishment of esplanade reserves, which is often used as a reason to use esplanade strips, even though these are uncertain and can be changed at a future date without reference to the public. A further improvement would be to remove the requirement for compensation where lot sizes are more than 4 hectares. This has resulted in many lots of 4.01 ha throughout the country, in an effort to avoid esplanade provisions. On the other hand, the voluntary provision of permanent legal access should be regarded as a positive in any application for consent, whether subdivision, a water or discharge or river bed permit etc. Similarly, where public funds are expended in works to support landowners adjacent to water bodies or public lands, such as for flood control or drainage works, these should automatically enable public walking access to and along those public resources.

Often the width of esplanade provisions is inadequate to their multiple use task. This would be a matter of interest to the Access Agency, whereby they could set standard approaches to those esplanade provisions needing public access.

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;

This could be undertaken, but would largely just show what is already known and has been already quantified, which is that many local authorities have failed to adequately provide for public access in their decision making. It would be preferable to seek that local authorities, within 12 months, in conjunction with the Access Agency, provide information in a standard format on the current extent of practical public access to and along public resources in their districts, and advise what actions they are taking to address any gaps in provision, with clear delimitation of priorities. This could be summarised in a report to Parliament by the Access Agency, with a view of scoping what and where resources would come to complete access.

- 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?);

Once the summary review is undertaken as described above, the Access Agency could consider issues of resourcing. It may not always be appropriate to support local authorities to undertake these tasks, given that in a number of cases the issue is of low priority. In some cases it may be better addressed by directly taking responsibility and adequately funding a response by central government. A central fund administered by

the Access Agency might be made available. A similar approach has been adopted in the provision of funds to undertake Biodiversity activities on behalf of central Government.

- removal of the requirement to compensate if taking reserve or strip on subdivision into lots over four hectares;

As discussed above, this is supported.

- assistance to local authorities to produce “access strategies” to guide applications for resource consent and in proposing road stopping (how could assistance be given?);

As discussed above, a National Policy Statement on how to provide for Section 6(d) of the Act could be undertaken by the Access Agency as a priority matter. Note, however, that this would cause necessary amendment to District Plans, which might not come into effect for up to 3-5 years after its being promulgated. It would be desirable, but not in itself sufficient.

- provision of more central government guidance via the New Zealand Coastal Policy Statement or a National Policy Statement on access under the RMA;

See comment above.

- change to the local authority discretion to waive or reduce reserve and strip requirements?

As discussed above, the basis or opportunity to do this should be limited. The grounds for waiver and reduction are restricted now, but many local authorities routinely use legally irrelevant reasons such as costs, future maintenance, likelihood or otherwise of adjacent subdivision. These may not be legally relevant, but often feature in the decision-making process now. They would almost certainly also feature in future.

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;

A systematic approach is required. Walkers and their organisations could identify priority areas as part of a process to ensure that priority areas are addressed first, but it should be the responsibility of the Access Agency or the responsible public agency to establish their priorities in accordance with the initial review and the aim and principles for access, then undertake negotiation with landowners. It is essential that an appropriately skilled person, with all the relevant information, undertakes the negotiations on behalf of the public. In most cases it would be expected that agreement satisfactory to both parties could be achieved. Where no satisfactory arrangement can

be made, this needs to be recorded and a decision made as to whether matter should be taken further, to a dispute resolution process as discussed above.

- 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;

This would be desirable, as it would achieve the certain and enduring aspects of the access principles.

- the establishment of access strips by local authorities;

These would be part of the solution, as discussed above.

- the use of unformed legal roads;

These are certainly part of the solution. It is important that the rights and opportunities to use these are not 'traded away' in negotiations. Any access created should not normally be of a lesser standard than would be provided by public roads. This is particularly important for hunters and, where appropriate, for 4WD users.

- other (please describe).

All these methods need to be used.

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?

An obvious first step is the identification of access by local authorities to a standard format developed by the Access Agency as described above. At the same time, interested parties could be encouraged to identify access 'hot spots' or deficiencies and priorities for action in each local authority area. When these two sets of information are analysed, priorities can readily be developed. The results of this work should be a matter of public record, which would expose both good and bad practice. It may be appropriate to initially focus on those areas where progress can readily be made, but not to defer dealing with difficult issues/areas for too long.

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

Provision of access to public resources is a national and local government responsibility, on behalf of the public. Private landowners should not bear costs of providing access, but nor should they be able to 'capture' or deny access to the public. Even simple things like failing to identify public roads on gates (as required by law) or establishment of new

fences can have the effect of denying public access. The public should not bear the costs of rectifying difficulties made by landowners. On the other hand, landowners should not bear the costs of provision of walking access. In most cases, our experience has shown that these are matters which are readily negotiated in good faith in the vast majority of situations. In general, the Access Agency should fund any practical requirements such as stiles or signs to private land, and the responsible agency should fund any costs associated with access using or to public land, with prompting if necessary by the Access Agency. It may be appropriate for a fund to be available to any public body to give effect to public access to priority areas where they have not been funded to provide this, if the appropriate standards of signs and stiles etc were used.

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

Our organisation is willing to assist both regionally and nationally, particularly with priority areas for action, both generally and specifically.

Unformed legal roads

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

Simply identifying the existence of public roads does not necessarily make them able to be used. They may not be practical because of cliffs, or running through buildings, or have fences, crops or stock preventing ready access. In some cases the distances are such that walking access is impractical. While the public have rights of access, it is our understanding that that does not extend to damage to private property on public land. This is a matter for local authorities, who frequently do not take the necessary action to facilitate public access.

- for adjacent landholders

When landowners are made aware of the existence of unformed roads they often realise that strict adherence to that particular line may be impractical or inappropriate to their land use (eg running through a paddock, a crop or a forestry block). Under these circumstances, most are happy to negotiate a more practical line to everyone's satisfaction.

- for local government?

Local government often see that unformed legal roads may have some potential future public use in some areas, but in the main are just nuisances. They are generally managed by the roading part of the Council, the managers of which are more interested in facilitating vehicle access on the formed roads. In some cases, they would prefer to rationalise them, but as the process to stop roads is complicated and the funds from sale are returned to the Crown, they rarely bother. There are some Councils which are actively seeking to quit unformed public roads. The process which enables this

procedure does not necessarily provide adequately for public interest in maintaining or rationalising legal roads. In our view any rationalisation of public roads should also consider present and future public access needs and be undertaken in a manner which enables consultation with the public and/or public agencies to ensure that public interests are recognised. Given that the roads were initially granted to local authorities by the Crown, the proceeds should be available to assist in provision of public access in other areas, where appropriate.

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

Obstructions have seldom been authorised in advance. There is extensive common law on this issue, including the responsibilities of local authorities. When there are issues of public access along public roads, these should be brought to the attention of the adjacent landowner and territorial local authority with a view to obtaining satisfactory walking or, where appropriate, vehicle access. If the local authority is unable or unwilling to deal with the matter, it could be brought to the attention of the Access Agency who could seek to resolve it, or, if necessary, to the matter to dispute resolution. Recording where public agencies have failed to address matters of public access could be part of annual reporting by the Access Agency to Parliament.

As discussed above, where there are costs on access which are the result of the actions of landowners, it should be the responsibility of the landowners to deal with them. Similarly, where costs are sought on behalf of the public, it should be the public or access agency which bears the costs.

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

Weeds and pests are seldom an issue in respect of access. If a walking access needs to be cleared, some support for this should be forthcoming from the Access Agency or the appropriate public authority. Where there is a public road which has weeds or pests of concern to landowners, this is an issue outside the provision of public access, in the same way that the grazing value of the public land to the landowner is also irrelevant to public access.

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

Yes, where the new public access enables the same rights of access as are presently available, but in a more practical form. In particular, where there is vehicular access it should still be available, or where hunters can access with dogs this should also be available. Any new access arrangements need also to be certain and enduring and meet the requirements of the Aim and Principles for access.

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?”

Yes No

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?

Not applicable. Where appropriate, this could be addressed through the Code of Conduct.

Fire risk

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

We understand that there is some residual liability for fire to landowners where the public may be accessing their land. If this is so, landowners should no longer be liable for any fire risk associated with the public entering or crossing their land. This could also be part of the code of conduct.

Biosecurity

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

This can be addressed through the Code of Conduct.

Rural crime and security

36 How could the community help to combat rural crime?

Rural crime and security are matters of concern to the rural community. Visitors from outside the rural area are largely seeking to visit to undertake legitimate activities and are keen to undertake these with regard to the interests of rural landowners. Providing walking access for such people, subject to the agreed Code of Conduct, is a good way of facilitating interest in and understanding of townspeople in rural life. Having more legitimate ‘eyes and ears’ will assist in reducing crime where this benefits from a lack of visibility.

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

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.

Customary Maori land differs from general land in that no 'Queen's Chain' will ever have been laid off. In some cases it also does not have adequate public access to it and may be land-locked.

There are resources of interest to Maori on their land, on public land and sometimes on private land. An example of this are matters of cultural interest. Access to these is sometimes sought, such as to mahinga kai, on a similar basis to public access. In other cases, iwi or hapu may prefer no public access or may not even wish public knowledge, such as to waahi tapu or urupa. These are able to be differentiated on a site by site basis. It is possible, therefore, to manage these issues on a culturally appropriate negotiated basis analogous to that for other private land. In general, but not in all cases, Maori do not seek to deny public walking access. In some, more controversial circumstances, Maori seek financial return by charging for access, such as with Mt Tarawera. In such cases the Crown may need to discuss an appropriate response to meet with the interests of Maori but also provide for appropriate public access which meets with the aim and principles set out by the Access Panel. The way in which Maori land is dealt with will differ from the response in respect of non-Maori land, but the broad objectives should be largely the same. Such a response has been provided for Lake Taupo and the Rotorua Lakes and appears likely for the bed of the Waikato River. In general, where the access is to enable access for recreational use of introduced fish and game species, no access fee should be payable by the recreational user.