

Public Access New Zealand

An Incorporated Charitable Trust
PO Box 17
Dunedin

29th June 2006

IMPROVING PUBLIC ACCESS TO THE OUTDOORS:

A RESPONSE TO THE WALKING ACCESS CONSULTATION PANEL CONSULTATION DOCUMENT

STATEMENT OF INTEREST BY SUBMITTER:

Public Access New Zealand Inc, is a registered Charitable Trust established in 1992 . The Trust objectives are the preservation and improvement of public access to public lands, waters, and the countryside , through retention in public ownership of resources of value for recreation. Public Access New Zealand Inc, is supported by a diverse range of land, freshwater, marine, and conservation groups and individuals.

Public Access New Zealand Inc., has been involved from an early stage in the debate on public access and has previously submitted a lengthy , and well researched document entitled :

"IMPROVING PUBLIC ACCESS TO THE OUTDOORS"

(A strategy for implementing the Government's election policies.)

With the intent of making a further staged submission on the access issue Public Access New Zealand Inc., has now conducted a comprehensive review of the original document and is pleased to advise that we have found no substantive matter raised in that earlier submission document which would require alteration.

What we have been able to identify are matters requiring further explanation, and further emphasis as we all move forward towards a mutually acceptable agreement on the subject of better public access to the outdoors.

At this point it is essential that all parties involved accept that the

achievement of the Government's promises on access to the outdoors is not a matter of " IF " but " HOW" they are achieved and that will be the focus of our submission which follows. .

Public Access New Zealand Inc., is committed to supporting all initiatives aimed at achieving the Governments stated objectives and we welcome this opportunity to make further comment on the issues which the Panel has now raised.

Alan McMillan,
Chairman,
Board of Trustees,
Public Access New Zealand Inc.,
P.O.Box 17,
Dunedin .

EXECUTIVE SUMMARY :

Public Access New Zealand Inc., must express its appreciation to the Government for its foresight and stated commitment to solving the vexed issue of public access to the outdoors.

We are also most willing to recognise the outstanding work undertaken by the Walking Access Consultation Panel in its efforts to consult, identify and recommend solutions. We believe the leadership of Mr John Acland in this regard has been largely responsible for the credibility now given to his group by all parties involved.

There is much in the Consultation Panel Document. Some which is to be commended, some matters which need to be further explained or developed, and a small number which need to be seriously questioned or rejected outright but the overall picture given is one which we believe can be greeted with considerable optimism.

We are in agreement with the Panel that all access issues cannot be solved in the short term and will readily accept immediate progress on those issues which can be addressed now while a program is developed aimed at achieving comprehensive coverage in the longer term.

Transparent progress towards the ultimate achievement of the overall aim will go a long way towards public acceptance of the decisions which need to be made.

We must express our concerns that the Panel is confined to comment solely on Walking Access to waterways . This would appear to us to be unduly restrictive. Access issues are not confined to walking access, or to those areas adjacent to water margins, and indeed there is a large body of the recreational public whose interests will not be served by this restriction.

We believe it important that the Panel advise Government that, notwithstanding the terms of reference, its access solution needs to have an expanded focus to include other public land.

Another item which has not been included in the Panel's report is the matter of exclusive capture of public recreational resources by commercial interests. We note that in the initial Panel document considerable emphasis was given to this matter--yet all comment in the current document has been excluded.

We believe this is an omission which should be reversed. While the main impact of exclusive capture is seen as falling on angling interests the ability of commercial interests to claim exclusivity to a fishery is facilitated by their ability to deny access, under various subterfuges, with impacts on the general public as well as anglers. Under those circumstances this issue becomes a major concern for all outdoor recreationalists and we are aware our views are shared by some in Parliament.

In our submission which follows we have endeavoured to offer opinion and constructive suggestions as to how the Panel's 38 listed questions should be answered and as accompanying appendices we have offered extended comment on some issues which we believe are major points within the overall discussion.

Public Access New Zealand, has identified a list of 10 major actions Government can take to address access issues in Table 1. below. These 10 points are of equal importance and not listed in any order of priority.

We see it as of paramount importance that those access issues which can be solved in the short term without reference to legislation, or any challenge to private property rights, be addressed with urgency so that immediate gains may be seen . We believe that is critical to the credibility of both the Panel and the Government in their stated commitment to improving access to the outdoors.

| TABLE 1. PUBLIC ACCESS: 10 PRIORITY AREAS FOR GOVERNMENT ACTION | |
|--|---|
| Signage on Unformed roads | <ul style="list-style-type: none"> Clearly mark and signpost important unformed/partially formed public roads |
| Legal Ability to Swap Road Locations | <ul style="list-style-type: none"> Facilitate the swap of public roads in awkward locations for equivalent roads in more practical locations. |
| Improved Queen's chain trigger mechanisms | <ul style="list-style-type: none"> Improve trigger mechanisms for Queens chain (marginal strips and esplanade reserves) under legislation including the Overseas Investment Act and the RMA |
| Better access outcomes from tenure review | <ul style="list-style-type: none"> Require better public access outcomes from tenure review in the South Island high Country |
| Access Commission | <ul style="list-style-type: none"> Set up and fund an independent Access Commission that reports to parliament. |
| Public information on public land and access | <ul style="list-style-type: none"> Provide accurate public information on the location of all publicly accessible land including public roads, marginal strips and easements established under RMA consent processes |
| Public access shown on maps | <ul style="list-style-type: none"> Require LINZ to mark public access on its MS 260 etc topographic series |
| Moveable riverside reserves | <ul style="list-style-type: none"> Make all marginal strips and esplanade reserves moveable |
| Swap location of 'stranded' Queens chain reserves | <ul style="list-style-type: none"> Swap stranded Queen's chain for moveable marginal strips alongside water bodies where rivers have shifted course historically |
| Funding for access solutions | <ul style="list-style-type: none"> Make a funding commitment for use in the resolution of access issues. |

RESPONSES TO QUESTIONS

The following is the Public Access New Zealand, response to the 38 questions listed in the Consultation Document.

Question 1 :AIM

We note 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."

We believe the inclusion of the word "significant" should be removed or qualified, as it will be subject to various and possibly contentious interpretations.

If it is necessary to qualify what is intended we would suggest the designation used in the Conservation Act to identify waters qualifying for margin strip establishment ie. waterways with an average width of 3 metres or more.--be used.

Question 2.: PRINCIPLES for walking access to land :

FREE, CERTAIN AND ENDURING

We agree with the Panel that access should be FREE, CERTAIN, AND ENDURING but ask the Panel to ensure that "certainty" is also applied to the right of the public to access PUBLIC LAND - and note that the right of landholders to exclude the public from privately owned land should be qualified to allow potential exemptions which may arise from the consultation process.

RESPECT FOR PROPERTY AND THE ENVIRONMENT.:

We agree that persons exercising a right of access to land should take proper care of the environment and not interfere with private property or activities. We also believe these comments should apply to the use of public land

INFORMATION AND MAPS:

We agree the public should be able to access information including maps about land that is open to recreational use. That information should also include detail showing "access thereto" those lands.

REINSTATING LOST ACCESS:

We agree restoring reservations to water margins, where due to accretion or

erosion separation has occurred, should be pursued --and without qualification.

We agree with the principle of negotiation, in the first instance, to attain access objectives.

Questions 3, 4, 5, 6 : INFORMATION ABOUT ACCESS RIGHTS:

We believe the information should be available on a 1-50,000 mapping scale - In the current series 260--and should combine topographical, cadastral, and public lands information including roading -and particularly unformed legal roads.

Our suggestion is that both hard copy available for retail sale and free electronic copy be available. Hard copy may be notated as " information contained current as at date of printing- for updating refer electronic copy"

Questions 7, 8, 9, 10. SIGNPOSTING.

We agree signposting will be necessary and positive signposting is recommended, i.e. signposting to indicate where access is available. If signposting is deemed necessary, and we believe it wont be in all cases, local bodies should be responsible for provision and should bear the cost.

Questions 11, 12, 13, :. CODE OF RESPONSIBLE CONDUCT :

We recommend that such a code should apply only to access over private land but should be also indicative of the behaviour expected over public land
The Code should be a voluntary code and one agreed between recreationalists and landowners.

Questions 14, 15 : ACCESS COMMISSION :

We would recommend the establishment of an impartial and stand alone Access Commission headed by an Access Commissioner accountable directly to Parliament. The Commission must be adequately funded.

We envisage the Commission as having the primary function of overseeing the process towards the achievement of the Governments aim of improving public access to the outdoors. The Commission should be able to promote, and facilitate the process, mediate, and provide education at all levels, monitor the performance of local authorities and report to Parliament on those areas where statutory requirements are not being met .

The Commission should also have the responsibility to recommend to Parliament where legislation is required to circumvent intransigent

attitudes which could unreasonably thwart the Governments stated aims. The Commission should not become the repository of difficult issues for which local authorities or government departments such as DoC and LINZ already have statutory responsibilities.

The Commission will be of little consequence if it lacks teeth and any additional powers deemed by Parliament to be essential for it to function should be provided. We state again the issue is not "IF" but "HOW" the aims are achieved

Questions 16, 17. DISPUTE RESOLUTION:

We recommend that disputes be resolved through the good offices of the Access Commission, initially by negotiation and non binding mediation but we can see no alternative but that legislative teeth would be required, in some form, as a final arbiter.

Question 18.: PROPERTY RIGHTS:

There needs to be an acceptance that both private and public property rights exist. Public Access New Zealand, respects private property rights (while noting those rights are not absolute), and we expect a corresponding recognition by landowners of public property rights . Mutual agreement on this matter will greatly enhance the potential for an enduring agreement on the access issue generally.

Questions 19, 20, .: REALIGNMENT OF DISPLACED WATER MARGIN ACCESS..

We believe this is best achieved by legislating that all water margin reserves are moveable, thus placing all reserves on the same basis as post 1991 marginal strips which have this arrangement. A simple declaration that this is so may be sufficient,. It would seem unreasonable that a natural process such as accretion/erosion could be used to circumvent the stated intention of Government, the original objectives, and the public expectation.

It is interesting to note that in the case of a landowner holding an interest in both sides of a waterway on which erosion./accretion has occurred there is in fact no capital loss involved, and where different landowners on each side of a waterway are affected in the same situation then the issue of loss/gain is one for those landowners to settle. It is difficult to see in these cases how compensation could be entertained. Where there is a net loss to a landowner in favour of the Crown then compensation may in some instances be justified.

Question 21.: GAPS IN WATER MARGIN ACCESS:

We agree these gaps may be remedied by a secure and enduring voluntary agreement with landowners, by the establishment of esplanade reserves-(not strips which we hold as neither being secure nor an extension of the Queens Chain), by the acquisition of land by the Crown, and by using the terms for approval now entrenched in the Overseas Investment Act 2005. There is also potential for using unsuitably sited unformed legal roads as a negotiating point for establishing new marginal strips adjoining the same property.

Question 22.: NEGOTIATED ACCESS

The question " what would encourage landowners to agree to formal, certain, and enduring legal access " would best be asked of landowners but it did seem a major plank of landowner rejection of previous suggestions that compensation for land taken for access was not to be contemplated. As the Government has now agreed that compensation may be agreed in some specific cases that should have allayed at least some rural fears.

Question 23: RESOURCE MANAGEMENT ACT

The question raised by the Panel is whether the provisions for creating Esplanade Reserves and Esplanade Strips under the RMA are still appropriate or if the current process for creating these strips on subdivision needs to be changed if access is to be increased.

There are only two methods for the statutory establishment of riparian reserves--one on disposal of Crown land (marginal strips) and the other on subdivision (esplanade reserves), and this issue is therefore an important one.

From the point of view of secure access esplanade strips, being easements over private land, are not secure and enduring, being able to be cancelled by the courts and cannot therefore be regarded as part of the Queens Chain (*Crown land reserved from sale or other disposition*).

They do however have the advantage that they are deemed to be moveable, where Esplanade Reserves are not. We intend commenting on the potential for improving access outcomes through the RMA in an accompanying appendix.

Question 25: ACCESS TO WATER MARGINS AND OTHER PUBLIC LAND.

Access to these areas could be improved by negotiated agreement on a case by case basis, in some selected iconic situations by establishment of access reserves or strips by local authorities, and/or by the use of and/or realignment of unformed legal roads .

Questions 26, 27, 28.PRIORITIES:

We believe the highest priority should be given to the completion of a map

series 260 showing topographical, cadastral, and all public lands showing current public access ways

An adequately funded Access Commission supporting a Parliamentary Commissioner for Access should be established and legislated or deemed provision should be made for enabling all marginal strips and waterside reserves to become moveable.

We believe immediate steps should be taken, by recommendation to the relevant Ministers, that all unformed legal roads be protected from wholesale disposal, or any other device which would have the effect of diminishing their contribution to the current debate.

As an organisation we have other important priorities also but believe the above would give immediate valuable information, credibility and security to the whole process .

Public Access New Zealand is willing and available to assist the Panel in establishing its priorities.

Questions 29, 30, 3,32. UNFORMED LEGAL ROADS .

We have firm and constructive views on the value and potential uses of these roads and address this issue in an attached appendix on this subject.

Questions 34, 35, 36, 37, 38. POSSIBLE HEALTH AND SAFETY LIABILITY OF LANDOWNERS

The extremely limited liability for landowners under the Health and Safety in Employment Act 1992 has been explicitly explained in the past on a number of occasions and clearly laid out in bulletins issued by the Department of Labour. We are not convinced that the expressed concern is valid.

With regard to FIRE RISK, BIOSECURITY, AND RURAL CRIME we would again question whether the expressed concerns are valid.

We have seen no evidence that the quoted 70% of waterways currently providing public access have in any way contributed to the concerns expressed by some in the rural community and in fact there may be reason to believe that a greater public presence of persons with an environmental, sporting or recreational interest would deter criminal or anti social behaviour.

Question 38: TREATY OF WAITANGI CONCERNS.

In today's social climate the issue of access across Maori Land could be a contentious one but with an acceptance that we are one nation, we could not support a situation whereby general access is agreed over land owned by one segment of the population but not agreed over land owned by another. Access across Maori land must therefore be treated in exactly the same way as access over all other private land.

There must be due respect for the sacred and spiritual expectations of all citizens and this should be reflected in all access decisions.

THIS ENDS OUR COMMENT ON THE QUESTIONS RAISED IN THE PANELS "OUTDOOR WALKING ACCESS" CONSULTATION DOCUMENT.

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APPENDIX NO 1 : POOR ACCESS OUTCOMES UNDER TENURE REVIEW:

It has become increasingly apparent that an important objective of the Crown Pastoral Land Act 1998(CPLA) is regularly not being met during the process of Pastoral Lease Tenure Review.

That objective is

"The securing of public access to and enjoyment of reviewable land"

In addition the Department of Conservation (DOC) also has responsibilities in this issue in that it is required to promote public values including recreation and access, and report on these to Land Information New Zealand (LINZ).

DOC has a manual for tenure review which includes the statement:

All areas to be restored to Crown ownership as conservation area or reserve should have legal, practical and reasonably convenient public access secured where it does not exist a present.

There are no ambiguities in either of these statements and while we note the main focus of the Panel's considerations is on access to waterways and water margins we would observe that neither of the above statements is confined solely to "access to water" issues.

There is a general public expectation that access to the outdoors generally would be considered by the Panel , and we would ask the Panel to promote this issue to Parliament in its final report.

In spite of some recent apparent improvements we still find that access arrangements are being made which involve quite unsatisfactory situations.

Access on unsuitably steep alignments, access via marginal strips provided with little apparent consideration for practicality, indeed access provided where safety has not been considered .

We also identify situations where opportunities to establish quality access have been completed overlooked.

The Process of pastoral lease tenure review is the last major disposition of Crown land in New Zealand and as such provides the last opportunity to establish reasonable and comprehensive access to the outdoors. We cannot see that any lost opportunities now could ever be recovered in the future and the importance of resolving the current unsatisfactory position cannot be overstated.

We note the recent history of public access provisions in New Zealand have not been assisted by changes in legislation which have had the effect of initially diminishing

and then finally removing access from the focus of those departments which should be promoting the public interest.

Prior to 1987 the Lands and Survey Department was in effect the public voice for access but in that year it was abolished and that role was not transferred to another agency.

In 1996 the Department of Survey and Land Information was abolished and with it went all responsibility for producing cadastral maps in hard copy which showed property boundaries , public unformed roads, marginal strips etc,.

Land Information NZ (LINZ) was the beneficiary of this as their Land-On-Line commercial electronic system was available albeit at a much higher price.

Public Access New Zealand, is not satisfied with the performance of LINZ in its Tenure Review responsibilities.

Current LINZ policy appears to consider marginal strip creation as a consequence of tenure review rather than an integral part of the process --to be sorted out by DOC after the event.

LINZ appears to argue that marginal strips are DOC's responsibility ,not theirs, in spite of the fact that LINZ action in designating land as freehold instigates marginal strips. We fail to see the logic in not closely linking the two processes.

The consequence of this practice are evident during tenure review as Preliminary Proposals are prepared without definitive information as to the existence of marginal strips. This negates any ability that the Commissioner of Crown Land agents or DOC may have to conceive new access provisions that depend on utilising water margins, and makes a farce of the public submission process . Landholder interests would also be served by early publication of existing and planned marginal strips.

The public submission process should be assisted by the availability of information as to the position of any pre existing marginal strips on the property concerned, and the location of any proposed new ones.

We have noted another undesirable practice which has surfaced and this involves either LINZ or DOC "negotiating " with lessees over what marginal strips should be reserved or shown. This is clearly in breach of the Crown's statutory requirement to create such strips solely on technical bed-width criteria . There should be no negotiation except where additional access is required above that established within the statutory requirement.

In addition LINZ do not consider the existence of road reserves adjacent (and sometimes running through) pastoral leases under review on the basis that it is not

part of the land under review. LINZ will not define such roads by survey for cost savings reasons even though linkage of the tenure review and the future of roading in the area is a sensible thing to do.

There are other issues which we will endeavour to cover under a further appendix -- "Mapping"

We believe action is required to remedy these situations and we would ask the Panel to refer these to the relevant Ministers to ensure the Departments concerned remedy their shortcomings.

ACTION REQUIRED.

- Require LINZ to identify existing marginal strips at the Due Diligence--Land Status Reporting stage of tenure review.
- Require LINZ, in association with DOC, to determine the extent of waterways qualifying for new marginal strips before preparing draft Preliminary Proposals .
- Require LINZ to depict the above information on plans accompanying Preliminary Proposals (being available to landholders and the public)
- Require LINZ to graphically record the existence and extent of marginal strips on all relevant survey plans , capable of depiction in "spatial view" on LANDONLINE, including notation as marginal strip, statutory authority, moveability, and width.
- Require LINZ to take account of road reserves that bisect or adjoin leases under tenure review.

We note that The Minister of Lands, The Hon. David Parker, has recently made some decisions relating to the recording of marginal strips that may go some way towards satisfying the above concerns.

APPENDIX 2: PUBLIC ROADS AND PATHS

The protections and certain rights afforded by public roads are of immense value to the general public and with particular regard to unformed legal roads (so called paper roads) both their existence and value is widely misunderstood.

Within the current debate on improving access to the outdoors we believe unformed legal roads will play a major part. It is imperative therefore that this be recognised and protections be put in place to ensure their existence is not challenged by those who would have a vested interest in their "stopping ".

We would emphasise that unformed legal roads have the same legal status and confirm the same public rights as any highway, and education of landowners and the public as to their rights and restrictions will be an ongoing need.

There are some widespread misconceptions surrounding the roading issue and a major education program, at all levels will need to be indicated, by the Panel, to Government.

There is a need for clarification that public roads do not require fencing, formation or survey, and they need not be created for motor vehicles. They are created for pedestrians, horseriders, cycles, etc as well as vehicles and may be created for one form of access, or a combination.

Roads don't automatically mean cars and those local bodies that regard unformed legal roads as requiring full width formed carriage ways suitable for vehicle traffic, and use these costs as an excuse for ignoring their existence, are in error.

The status of unformed legal roads is widely misunderstood by the public and by landholders and this is compounded by the lack of interest shown by local authorities.

There is widespread abuse of roads by adjoining property owners due to ignorance, commercial imperatives or in fact arrogance and it needs to be firmly established that roads do not cross private property but that they bisect it.

An adjoining landowner cannot legally assume proprietary rights nor place constructions across a public road which would have the effect of obstructing public passage.

Unfortunately local authorities whom administer most roads see those roads as a liability and despite having all necessary powers to ensure that roads remain open and unobstructed, generally show a marked lack of resolve to use those powers.

In short there is an enormous network of unformed legal roads throughout New Zealand which on their own, if given due recognition, would solve the majority of public access issues while avoiding the necessity for arbitrary acquisition and / or a challenge to private property rights.

Unformed legal roads would allow passage of recreational hunters with firearms and / or dogs, could allow passage of vehicles, and generally open up the countryside to recreational opportunities in a manner which required no legislative action and, as we have said, no challenge to private property rights.

We have commented elsewhere on the restricted terms of reference being addressed by the Panel in that it is only to address the matter of walking access to waterways and public lands rather than access to the countryside generally.

We would make the point that the public road system on its own is capable of providing at least walking access for recreation over a wide area of countryside-and not just to waterways and public lands, and the deliberations of the Panel should recognise this.

PANZ has previously stated :

" No national plan is required, just local action.

However national impetus is needed to encourage action . Most roads are under local authority control. These authorities should instigate a program entailing consultation with DOC, their own reserves and recreation departments, LINZ concerning Crown land access , adjoining landholders, and the public, to identify all public roads ,existing access to public lands, deficiencies and options for improvement." Any land acquisition required should be by negotiation, and compensated for, and it should be stressed that land acquisition can be minimized by taking only sufficient width necessary for the form of access proposed. (e.g. 3 metres for a walking path rather than usual 20 metres for vehicle roads)

We note it has been suggested that the previous New Zealand Walkways program could be used in some way to enhance general access to the countryside but the performance of that program has not been encouraging. With some 30 years of effort only a limited number of walkways have been established nationwide and most of those are over public land where access already existed.

While extending Walkways over private land by negotiated easements is a worthwhile objective we would suggest the evidence to date indicates that the benefit to public access would be small and somewhat insecure compared with a program utilising the existing nationwide network of public roads

The realignment of some unformed legal roads to more suitable locations (suitable for both landholder and recreationalist) we believe would be welcomed by all parties and would be encouraged by PANZ providing the existing rights over the road were not diminished on relocation.

One farming spokesman recently highlighted the problem, which is only slowly being recognised, that in his words, " paper roads are running through fences, farm buildings, stockyards etc and causing real problems" . Well he hasn't got that quite right-the "paper road" was there first and those obstructions were built illegally over a public highway.

It would certainly be in the interests of all parties to discuss realignment. Not only for the potential to relocate the public road to a more acceptable position for all parties but also for consideration that the public road be swapped in some cases for a marginal strip on an adjoining waterway.

As action points for the Panel's consideration we would suggest.

- Local authorities to instigate a program to identify all legal roads, existing access to public lands, deficiencies and options for improvement.
- When creating new access to public lands and waterways preference should be given to dedication of public foot, cycle paths as alternatives to vehicle roads when vehicle access is unnecessary . Government should initiate an education program at all levels on rights and responsibilities aimed at roading authorities and road users.
- Create a duty in legislation for authorities in control of roads to assert and protect the public right of passage.
- Introduce in legislation an offence provision for failure to signpost gates as "PUBLIC ROAD" as is required under section 344(2) Local Government Act - and also for the erection of misleading signs.
- Amend Road Stopping procedures by amending statutes to make an existing power of Crown resumption of unformed roads (section 343 Local Government Act) subject to public "stopping" procedures . Retain public ownership and control of public roads.

APPENDIX NO 3 : QUEENS CHAIN -TRIGGER MECHANISMS AND MOVABILITY

Sale or other disposal of Crown land, or subdivision of private land are the two main triggers for the creation of public access to waterways.

The major sale or disposal of Crown land at the present time occurs within the Pastoral Lease Tenure Review process and regrettably our experience is that access issues within this process appear to have been largely marginalised.

As previously pointed out Land Information New Zealand appears to consider marginal strip creation as a consequence of tenure review, and therefore DOC 's responsibility, rather than an integral part of the process.

Whether this attitude is technically right or wrong is irrelevant. It is diminishing the intent of the Crown Pastoral Land Act 1998 and LINZ should be instructed to review its position.

The CPLA 1998 has a very clear objective on this.:

" The securing of public access to and enjoyment of reviewable land"

This is another example of an agency of Government ignoring the public interest by disregarding the intent behind their instructions.

The trigger mechanism within the sale or disposal of Crown land is an excellent process but it does require those agencies responsible for its initiation to perform to their statutory duties

Our expectation is that the Panel will note this problem and send a strong message to the agencies concerned that greater emphasis must be placed on the objective in the CPLA outlined above

The other main trigger mechanism occurs as a result of subdivision.

Two types of reserve may be created on subdivision. Esplanade Reserves and Esplanade Strips.

The ownership and control of Esplanade Reserves is usually vested in a local authority and subject to the Reserves Act.

Esplanade Strips after establishment remain in private title and do not meet the essential "Queens Chain" requirement of being public land reserved from sale or other disposition.

Esplanade Strips have very constrained public rights of access and recreation but they do move with changes to watercourses. It is not clear why this is the case when

the legal issues relating to moveable reserves were resolved in the Conservation Act s24.

It is fair to say that many Local authorities are reluctant to accept reserve management responsibilities and for this reason relatively few Esplanade Reserves are now created. This is compounded by compensation issues.

Since 1993 compensation has been payable for both Esplanade Strips and Reserves involving allotments greater than 4 hectares in area. Compensation is not payable for standard 20 metre strips and reserves on smaller allotments

These compensation provisions create a disincentive to establish reserves and should be removed to ensure the creation of public reserves on subdivision are removed.

Additionally it is clear that the ability of local authorities to waive or reduce obligations to provide public reserves on subdivision is far too readily used despite the clear intention of the legislation to improve public access.

The proposed Access Commission should be able to oversee all district plans to ensure that the public interest in this respect is secured.

MOVABILITY :

All Marginal Strips established prior to 1990 remain fixed in position as do Esplanade Reserves. This means that when watercourses change historical marginal strips do not move with the bank and can be left completely disconnected from the river margin thus defeating their public access and riparian management purposes.

Margin Strips created since 1990 are movable meaning that their water-ward and land-ward boundaries automatically change with changes to the watercourse.

It should be noted that this movability applies only to land owned by the Crown and on all land the title to which is subject to Part 4A of the Conservation Act. It does not apply to other land.

We believe that to maintain consistency and logic the concept of movable freehold boundaries should be extended to all situations involving water margins.

We appreciate there are sensitivities in this with regard to assumed private property rights but accretion/ erosion are natural processes which can occur on all boundaries, including those of the Crown, and claims for compensation would probably not be sustainable.

Where banks are stable over time there is probably no problem but making riverside reserves capable of moving in all situations would cover all future eventualities

Significant changes to existing statutory law, and extension of common law presumptions would be required if this course is followed.

There is a further existing mechanism for improving the status of marginal strips which allows the exchange of fixed marginal strips for other strips of land where this better serves their access and conservation purposes.

Section 24E of the Conservation Act refers.

These new strips should then become movable.

This would allow realignment of those marginal strips along waterways from where they have been previously isolated .

We have concerns however that DOC's current practice appears to be that fixed strips should be replaced with new fixed strips, thus defeating the purpose of Section 24E .

Creating a generally applicable movability mechanism is highly desirable.

It has been stated that up to a third of Queens Chain reservations are now off their intended margins with waterways and this matter requires urgent and serious attention

We would suggest the following for the attention of the Panel:

Make all marginal strips esplanade reserves and roads along water margins movable through amendments to the Conservation, Reserves, Resource Management and Local Government Acts . Make all tenure reviews and lease renewals involving lands of the Crown conditional on exchange of any fixed marginal strips for movable strips.

APPENDIX NO 4 : MAPPING-IDENTIFICATION -SIGNPOSTING.

The greatest single obstacle to increased public enjoyment of the outdoors is the lack of readily available information on the exact location of public lands and public accessways.

We believe it critical that for the achievement of the Government's aim to improve public access to the outdoors the earliest possible preparation and publication of a Public Access map series is completed.

It is not surprising that the current lack of such information is responsible for many misunderstandings and confrontations between landholders and outdoor recreationalists and both parties will greatly benefit from a credible mapping series

In spite of claims to the contrary most recreationalists respect private property and will hesitate to cross land where they are uncertain of their access rights.

Accurate publication of legal accessways will provide every incentive for recreationalists to stick to those accessways rather than risk confrontation by wandering across private land.

From the landholders point of view accurate publication of public accessways will allow better management of farming practice where unformed legal roads exist and in general will provide a much more certain understanding of what public access rights exist in their area.

At the present time all parties suffer from a complete confusion as to their rights and responsibilities and a Public Access map series will be a major step forward in addressing that.

We have previously suggested a proposed mapping series should include topographical, cadastral, and public land information including all roads. This could be based on the NZMS 260 series at 1:50,000.- and we have expanded on the detail as to how this could and should be achieved.

It has been indicated to us that a series similar to this has been progressed by the department and we welcome that news.

However in view of the fact that as an organisation we have been repeatedly advised over the years that our suggestions are impractical, or not possible for technical reasons, we have some concerns as to what is in fact currently planned.

There are others as well as ourselves who have a clear understanding of what is desirable and technically possible and we are sure all would be eager to contribute their expertise to ensure that the final result in fact meets all expectations.

We have repeatedly emphasised the importance of the mapping series, and the need to get it right, and would therefore urge the Panel to seek input from interested NGO's before the final decisions on format are taken.

A comprehensive identifying, marking, mapping, and subsequent public use of legal accessways will not be achieved overnight but all parties now have enough knowledge to make a start and it is essential for public confidence in the process that some bold early initiatives are taken . Identifying easements providing public access across private land, in particular, may be a time consuming task but we do not expect all problems to be solved a once and that issue need not delay the implementation of other developments.

Public walkways may also be difficult to identify in some cases (but with GPS now readily available that difficulty should not continue for long into the future)

The completion and publication of the Public Access mapping series will be a great step forward. Once identified and subsequently mapped the issue of SIGNPOSTING legal accessways arises. This is another important part of the whole and is an issue that has caused much concern and confusion in the past. We believe signposting, where considered necessary, should be positive i.e. that signposting should indicate where access is available.

Additionally we note that obstruction of public roads is the largest access problem in New Zealand. Failure to signpost gates across formed roads is an existing requirement of the Local Government Act (section 344 (2)) and is almost universally ignored. Councils currently have power to authorise gates across public roads provided signs are erected and maintained stating "PUBLIC ROAD " but it is exceptional to see this requirement observed. It should be an express offence not to erect, and maintain, such signs with councils having a duty to ensure compliance or remove offending gates. There should also be an offence provision for misleading signs or notices which are likely to deter public use. Misleading signposting should be deemed to be an obstruction, triggering the proposed council duty to assert and protect the public right of passage.