

26 July 2006

The Chairperson
Walking Access Consultation Panel
PO Box 2526
Wellington
Attn. John Acland

Dear Sir

SUBMISSION ON THE OUTDOOR WALKING ACCESS CONSULTATION DOCUMENT

1. Introduction

1.1 The Hurunui District Council makes the following submission on the Outdoor Walking Access Consultation Document (OWACD). The submission provides some background on the Hurunui District; and then addresses the Council's concerns under subject headings.

1.2 The Council makes this submission having regard to both its functions and duties in relation to roads, access and land uses under the Local Government Act 2002 (LGA) and the Resource Management Act 1991(RMA); and as the democratically elected representatives of the residents and ratepayers of the Hurunui District. The submission was discussed by the Council's Environmental Services Committee at its meeting on 22 June 2006; and will be endorsed by the Council at an ordinary meeting held on 10 August 2006.

2. Summary of Submission

2.1 Hurunui District Council does not support the concept of developing a national land access strategy. The Council submits that the 'issue' has not been researched to a degree sufficient to demonstrate that a national strategy is necessary, or the associated costs justified. The proposed methodology has the potential to impose significant costs on local authorities and alienate the many rural landowners who provide 'goodwill' access; yet offers no real solution to the few areas where public or goodwill access does not exist and cannot be negotiated with the landholder.

2.2 The Council believes that access issues should be addressed on a case-by-case basis, at a local level. The Council submits that if a comprehensive assessment was undertaken of the number and nature of access issues around New Zealand, the results may well show the number of significant issues to be small and that 'doing nothing' or retaining the status quo is the most satisfactory management option.

3. Background Information

3.1 Hurunui District is located in North Canterbury between Leithfield (just north of the Ashley River) and the Conway River (just south of the Kaikoura Peninsula); and stretches west to the Southern Alps and east to the Pacific Ocean. The District is a predominantly rural area of 864 460 hectares and a population of around 11 000 residents. Hurunui contains many recreation areas and waterways, including beaches at Leithfield, Amberley and Moutunau; Lakes Tennyson, Taylor, Sumner and Loch Katrine, and several major river systems, including the Hurunui River – a much valued fishery. The District maintains 1445 km of roads and has an estimated 2500-3000km of unformed paper roads.

4. Need for an Access Strategy

4.1 The OWACD does not provide any information which clearly defines the nature and extent of the problem, or justifies the need for a national access strategy to resolve it. The Council suggests that the project is responding to a few, high profile cases where access has been frustrated by new landholders; and anecdotal evidence from submissions. The Council submits that this information may indicate an area for research or investigation, but should not be the basis for determining that there is a problem which warrants a strategic, national response.

4.2 The Council submits that by international comparison, New Zealand is well-endowed with public recreational space, coastline, lakes and rivers, and access to them. In Hurunui District there is public access to most significant recreational areas. In addition, the majority of rural landholders provide access on request. Some landholders provide private tracks for unfettered public access. The Council is also aware of a few cases where there is no public access to areas or where past access has been denied by new landholders. The Council submits that there are no new solutions mooted in the OWACD which will resolve those issues, yet the OWACD proposals have the potential to create a myriad of issues where they do not currently exist.

5. Cost-Benefit Analysis

5.1 Local authorities are charged with statutory duties to undertake rigorous cost-benefit analysis before adopting any significant policy or project, under both the RMA and LGA. The Council submits that central government should exercise the same degree of analytical rigor in developing its own policies.

5.2 The OWACD is proposing options which have significant potential costs to either ratepayers or taxpayers (depending on funding) without any comprehensive analysis of the nature or extent of the problem; or any cost-benefit analysis of the options to address it, including the option to 'do nothing.'

5.3 The Council submits that given the emphasis on unformed roads and negotiation for new access, it is highly likely that responsibility for implementing an access strategy will fall to territorial local authorities. The costs of the proposed options are significant and will be most burdensome on rural authorities with small rating bases, a significant rural area with many recreational spots, and a vast network of unformed roads.

6. Defining the Problem

6.1 Before developing a solution, the Council submits that the OWACD needs to identify the nature and extent of the problem. There does not appear to be any comprehensive assessment of areas in New Zealand where access to public land or along the coast, rivers and lakes is frustrated, or the reasons why. The reasons why are important in determining possible solutions. Similarly, there is no assessment of areas where access is provided, through either public land or the goodwill of landholders.

6.2 There is no discussion of what is deemed to be a 'lack of access.' Is the OWACD focusing solely on areas where there is no access at all; or is it relying on submissions from parties suggesting there is no access because the access is not in the location of that party's choice? Similarly, there is no discussion about when a lake, river or part of the coast is deemed significant enough to justify public expenditure to create public access. Without such information, it appears as though the OWACD is embracing an ideology of a 'right to roam' rather than attempting to identify and address specific access issues.

7. Defining the Solution

7.1 The Council submits that the strategy and aims outlined in the OWACD may cause contention and confusion, in two ways.

7.1.1 Mixed Themes - There appears to be mixed messages about the form of access sought. The project aim is to provide access to or along specific areas of recreational value. However, the agreed issues and methodology appear based around a 'philosophy' to provide as much access over as much land as possible, using unformed roads.

7.1.2 Project Aim - The Council appreciates that a project aim should be succinct. However, the Council submits that in its current form, the project aim is not sufficiently well-defined. Some of the questions raised by the Council include:

- Is access to be provided to public land and along waterways, or to waterways as well. (The aim refers to *along* waterways). Often the issue is getting to rather than along the coast, a lake or river.
- What is meant by a 'significant' river and how will this be measured? Alternatively, will the 'significant' waterways be identified?
- Is access provided along/to all lakes or only significant ones?
- Will public access apply to artificial lakes and waterways?
- What is 'fair and reasonable' and who decides? For example, how frequently does access to a waterway or public land area have to be provided to be reasonable? The Council suggests that in some cases where people demand access, the situation is not that there is no access at all, but rather that the access is not at the most direct point, for them.
- What is foot access? Does it include dogs, rifles, bikes and horses?
- Is public access to an area needed if 'goodwill' access is already provided by the landholder?
- What happens where access to an area is provided for a fee, as part of a business venture?

7.2 Some of the Matters of National Importance set out in section 6 of the Resource Management Act 1991, are couched in similar language to the project aim. The result has been an enormous cost in expertise, time and community relations, as the meaning and application of the words have been repeatedly litigated for each district plan.

7.3 The Council questions whether a project aim of this nature is necessary. Section 6(d) of the RMA already identifies the maintenance and enhancement of access to and along the coast, lakes and rivers, as a Matter of National Importance in achieving the purpose of that Act. Parliament has already expressed a view about the importance of this matter in the RMA; and this has been reflected in district plans.

8. Methodology

8.1 The methodology promoted in the OWACD appears to be to use public roads to provide foot access where they exist; and to negotiate access over private land with landholders, where they do not. The Council makes the following submissions on this methodology.

8.2 Effectiveness

8.2.1 The Council suggests that in most cases where public access to or along an area is frustrated, it is likely to be because there is no unformed road and the landholder is not willing to grant access over private land. Local authorities already have statutory powers to remove obstructions over unformed roads. Most district plans identify areas where access is an issue in the District and have policies and methods to address it. The OWACD does not appear to offer anything more.

8.3 Funding

8.3.1 The Council submits that local access issues should be addressed at a local level. One area where central government could assist is in funding. The Council suggests that a barrier to providing access to some areas may be the cost. Small, rural local authorities already struggle to fund their existing statutory obligations (particularly where upgrades to infrastructure are required) while keeping rate increases to a minimum. It is unlikely providing public walking access will be a high priority for expenditure, particularly if it is not an issue for local residents.

8.3.2 The Council submits that central government funding does not need to be tied to central government control. There are existing models whereby local government can apply to central government for funding if certain criteria are met, eg road sealing. Central government could reflect the importance of outdoor walking access on the political agenda, by the amount of funding it makes available.

Suggested Alternative

The Council believes that the local level is the place to deal with local access issues, and such issues (and options) should be identified in district plans. The role for central government should be limited to providing funding to assist local authorities, based on existing models.

8.4 Negotiation

8.4.1 The Council submits that any new form of access, including the use of unformed roads or marginal strips, must be in consultation with landholders. Some landholders do not know the position of unformed roads on their property or the legal status of an unformed road. Many unformed roads are impassable or dangerous and do not provide any real physical access. In some cases, they have never been used.

8.5 Goodwill of Landholders

8.5.1 The OWACD does not discuss the role of landholders who provide 'goodwill' access; and what the cost may be, in access to areas where there are no unformed roads, if that goodwill is lost.

8.5.2 The document does not discuss the value of 'goodwill' access in regulating behaviour. The Council submits that people may be more respectful of the land and conditions of access if: their identity is known; and the access is a privilege which can be taken away. If access has to be requested, it is more likely to be made by genuine recreationists, rather than people looking for sites for poaching or other unlawful behaviour; and by experienced recreationists who know the area and are well-equipped.

8.5.3 The document does not acknowledge the value of landholders knowing who is in the area for both their own safety and security and that of the recreationists: eg, if hunters are shooting in the area; or if a person fails to return when expected. Similarly, it does not acknowledge the potential cost and inconvenience to local landholders from people gaining access along unformed roads, when those people run into difficulties and the local landholder is the nearest and sometimes only form of help.

8.6 Code of Responsible Conduct

8.6.1 The Council submits that the discussion in the document about a Code of Responsible Conduct and behaviour which can be prosecuted under current law, is naïve. It ignores the burden of proof required for a successful conviction; and the practicalities of enforcing such laws in remote, rural areas where law enforcement is some time away, and most offences are committed anonymously. In a recent local example, two motorbikers were photographed pushing their bikes under the pedestrian barriers on a public foot access track to the beach, by the local ranger. She was helpless to stop them, and with their helmets on and no vehicle registration, they could not be identified.

8.6.2 As part of fostering 'goodwill' access, central government must review health and safety legislation and other statutes and policies which render landholders responsible for the well-being of people with permission to take access over their land.

Suggested Alternative

A Code of Responsible Conduct may only be read and adhered to by those very groups who behave appropriately anyway. The Council suggests an alternative may be an education campaign focused on attitudes. The campaign could tackle both appropriate conduct from people wanting access; and fostering the tradition of allowing access among landholders and farm managers.

8.7 Unformed Roads

8.7.1 The Council questions the necessity, wisdom and cost of promoting all unformed roads as potential foot access and providing free, unfettered information on their location, to the public. The reasons are:

- i. Unformed legal roads are not necessarily points of access now. They are areas identified by early surveyors as appropriate places to make roads, should they be required. Some have never been used for access. Not all are vested in the local authority. Many do not lead anywhere, or certainly not right to the waterway. Some are impassable, ending in bluffs or on eroding land. Some have buildings on them (usually historic). These features, and the exact location of unformed roads cannot be determined by a map. Their location and suitability for access needs to be determined on the ground.
- ii. Most landholders graze unformed roads, and maintain them for weeds and pests. Many are unfenced. Who will bare the costs for such works should those unformed roads be identified for foot access and no longer managed as a de facto part of the farm?
- iii. If the maps and information are to be freely available, who bears the cost of undertaking the mapping, generating the maps, and checking that the information is correct?
- iv. No one can tell from a map the exact location of an unformed road on the ground. They will need to be surveyed and marked. Who bears the cost of this exercise, especially if all unformed roads are to be shown?
- v. Who bears the cost to make unformed roads passable that are currently impassable. Eg, who tries to resolve an example in Hurunui District where an old homestead is built on an unformed road?
- vi. Many properties have multiple paper roads, and some waterways have many paper roads leading to them. Which ones are to be promoted for access and are only those to be shown on maps? It seems unnecessary and unfair to promote foot access along all such roads.
- vii. How will people ensure that the information is used for foot access only and will not be used for 4WD enthusiasts, off-road bikers and other forms of access?

8.7.2 One of the costs of providing easy access to this information, particularly if it is used disrespectfully, may be to alienate rural landholders. The result may be to lose 'goodwill' access where there is no unformed road, or for landholders to obstruct unformed roads that are currently available for foot access. The result could be less access to places, than exists now.

Suggested Alternative

The Council submits that a better solution may be to map the location of foot access to public land areas and to/along significant waterways where it is available now; and to state the form of access on the map – ie public, with permission of landholder. This information could be held in a database and provided on request. The Council suggests any such information should be collated with the express consent of the landholders involved and the costs of producing the maps recovered by a user charge.

8.8 Restored Access

8.8.1 The OWACD suggests that an unformed road which has been eroded, inundated or otherwise made impassable or disjoined from the waterway, could be recovered as a form of access. Access cannot have been lost to the area, if the unformed road was never suitable for or used for access in the first instance. If an unformed road has been lost by erosion (or shifted by aggradation), then it is quite likely this geomorphic process is still occurring. What happens when the next accessway is lost? The Council submits that 'restored access' must be with the agreement of the landholder.

9. Suggested Alternatives

9.1 The Council submits the following alternatives to the current access strategy being mooted in the OWACD:

- i. Define the nature and extent of access problems, through a comprehensive study of the location and nature of access to public land and along the coast, lakes and rivers in New Zealand, to identify where access is frustrated, why it is frustrated, and how many people are affected by it.
- ii. Define the solutions which may be workable. This will depend on the nature and extent of any access problems; the reasons why access is not provided; and the type of access which is appropriate in each case.
- iii. Assess the costs and benefits of any options to address access issues, including the option of 'doing nothing.' Costs and benefits must include the cost of potentially losing 'goodwill' access in areas where there is no public access.

- iv. Leave local access issues to local solutions. Central government should provide funding which local authorities may apply for, to assist in providing public access to specific areas.
- v. As an alternative to mapping all unformed roads, develop access information maps which record the location and conditions for existing public foot access to public land, the coast and significant waterways. The information should be prepared with the consent of landholders and should be funded by central government with the costs recovered from the user.
- vi. As an alternative to a Code of Responsible Conduct, consider an education campaign to promote responsible behaviour by people seeking foot access; and to encourage landholders to maintain the tradition of allowing access. Any such approach must be accompanied by a central government review of all legislation and policy which makes landholders responsible for the health and safety of any person seeking access over their property.
- vii. Any new foot access, including the use of unformed paper roads not previously used for the purpose, must be by negotiation with landholders and, in the case of unformed roads, the local authority.

Thank you for the opportunity to comment. Enquiries may be directed to either Lynda Weastell or Andrew Feierabend, at the Council's Amberley Offices.

Yours sincerely

Garry Jackson

MAYOR

HURUNUI DISTRICT