

New Zealand Deerstalkers' Association Incorporated

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Walking Access Consultation Panel

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Dear John and Panel

Response to The Acland Consultation Panel

Thank you all for the hard work you all have done in promoting better public access.

This submission is made on behalf of the **New Zealand Deerstalkers' Association Incorporated** (NZDA), the national body of recreational deerstalkers and other big game hunters. We have 53 branches and hunting member clubs throughout New Zealand. We have 6000 members, and have been actively advocating for recreational deerstalking and hunting, running hunter training courses, trips, conferences etc since 1937. We maintain ethical standards for hunting.

1 Summary:

NZ Deerstalkers' Association (NZDA) is very interested in places and access types where access with a firearm or bow and a dog is allowed eg public roads, marginal strips, public conservation land with a Department of Conservation (DOC) hunting permit. All users of the outdoors can and should be catered for. They all have rights of access which should be recognised and protected. NZDA wants to see everyone's public access rights, not just people on foot, recognised in the recommendations from this lengthy exercise.

1.1 Narrow Panel Focus on Water Margins is inadequate:

The Panel's brief started off being very narrow – public access on foot, (without a gun or dog) to water bodies. This only addresses some users and some access problems. As your Panel has carried out their discussions, it has become very clear that there are major problems for almost all recreational groups trying to access the countryside, even those who rely on known legal rights, such as legal roads and marginal strips eg in terms of not knowing where they are, or having them blocked illegally by adjacent landowners. It is not just those seeking access to water margins.

It is increasingly apparent that there is no official agency tasked with assisting, improving or mediating in supporting the recreational public address these matters. It is clear too that such an agency is essential to gaining fair recognition of recreational access rights, which are often very strong rights.

1.2 Current/Previous Access Guardians removed/redirected/inadequate:

The previous agency that partly played this role, the Lands and Survey Department. This was swept away in 1987, without proper replacement. Public access was further weakened in 1996, with Government's decision to drop paper maps of property boundaries and public access (public roads, marginal strips – cadastral maps) from being updated or printed officially, and greatly narrowing Land Information New Zealand's public mapping role.

Another major issue is that the main agencies and departments responsible for public access do not take their responsibilities seriously. LINZ is responsible for topo maps, and for public access under South Island Tenure review, but does a very bad job of both.

DOC is responsible for maps of parks, Crown owned marginal strips along waterways, and public access to public conservation lands. Yet it does none of these things adequately, if at all. Our enquiries show DOC has an almost zero budget for public access. And has no intention in providing one. It likes closing tracks on its lands, and in opposing responsible vehicular access over its lands.

District councils are responsible for the Crown owned unformed public roads that cover many rural areas. But they normally do nothing to signpost them, or stop them being blocked to the public.

1.3 Strong existing access rights based on public ownership of land:

Yet, a central tenet of public access rights in New Zealand is based on public ownership of access strips or land, the strongest level of access rights available. More than 30% of New Zealand, primarily remoter wild-lands, is publicly available as public national and conservation parks, reserves, conservation lands, and regional etc parks. Some 70% of water bodies have publicly owned access strips along them, available to all, including recreational hunters with firearms.

1.4 Strong need for an independent Public Access Commissioner, and Public Access Facilitation Fund:

This highlights the great need for **an independent Public Access Commissioner** reporting to Parliament on all aspects of public access. His job would be to protect the current very good public access rights, and to mediate with agencies, such as DOC and District councils, who should be protecting these rights. It would not be his job to take over these agencies access responsibilities. But to ensure that they carry out their statutory responsibilities. He would have Ombudsman type responsibilities to investigate and mediate public complaints on access.

The Commissioner would need a **Public Access Enhancement Fund** to pay for access improvements such as better access maps and signs, negotiating new or improved permanent access with landowners. The Commissioner would also review access laws and proposing improvements. He would also have a major goal of improving relations between recreational users and landowners regarding access eg by fair even-handed codes of conduct of landowners and those accessing land.

1.5 Benefits to both recreational users and land Occupiers:

There should be significant benefits to both recreational users and land occupiers from an even handed approach, through a Commissioner and Access Enhancement Fund. If this occurs, then getting both groups to see the positive side, and work together, eg to lessen the adverse effects of crime in rural areas by being eyes and ears, would be significant benefit, as well as helping bridge the rural-urban ignorance divide.

1.6 Legally strong publicly owned access network already exists:

New Zealand is fortunate in having a very sound foundation for public access, in its Crown owned public access strips – public formed and unformed roads, marginal strips, and public reserve land. The very strong rights against blockage and other constraints provided by Crown ownership mean that these strips provide very strong rights of passage to the public. The problem is often that these very strong public property rights are not enforced by their guardian agencies.

NZDA is a member of the recently formed Recreational Access Rights Coalition (RARC). The Coalition seeks the recognition of and observance of all recreational access rights eg recreational hunters with a firearm or dog, 4WD legal access etc, not just those of people on foot without a firearm or dog.

1.7 Importance of unformed Public Roads:

These provide for a range of users including hunters with disarmed recreational firearms, people with dogs, bicycles, even where appropriate, 4WDs and trailbikes. They are a very valuable, if sleeping access asset. It is essential that they are not lost, and that the Panel recognises their value, and recommends strongly that they be retained for current and future generations.

Two examples of unformed public roads under fire are:

1 Tararua District Council, where connecting roads across an amalgamated farm, and to a major scenic reserve (Waewaepa SR) are proposed for removal.

2 Wellington City - Makara Village: Snowdon's Road from Makara Village to Te Ika a Maru bay, which runs through the proposed Meridian windfarm

Tasman District Council is removing names from all unformed public roads, in an apparent move to make them "disappear", as part of its unique property GPS identification system. Councils behaving suspiciously.

1.8 Need for urgent political action:

This consultation has dragged on since January 2003. The longer it has gone, the more the need for change has become evident. The arguments put forward in this submission, and in similar submissions by recreational groups and individuals make a very strong case for government to proceed. The Panel owes it to the public to push for a Commissioner, a Public Access Facilitation Fund and political empowering legislation. There are significant benefits both to recreational interests and land occupiers in setting up a proactive system fair to both groups, as proposed in this submission.

It is also essential that the Public Access Commissioner is backed by legislation, eg a Public Access Enhancement Act establishing the office. Without this the Office will only be temporary.

2 Important Access Matters not in the 38 Questionnaire Questions:

These include:

2.1 Private owners denying access, and charging for access by hunters and fishers to water, and wild game animals, gamebirds and fish:

NZDA has been highly disturbed to see an increasing level of discrimination against big game hunting, and game-bird hunting, both waterfowl and upland game. This has been exacerbated by the value seen by landowners and others, on wild game and fishing waters to the exclusion of the non-paying public, and our youth is being denied the excitement of the outdoors, and diverted to fast cars, drugs, gangs and television.

2.2 Firearms, Dogs and DOC:

Recreational access to public land and marginal strips, by hunters carrying firearms (or bows) – (not 22s if native birds are at risk), and accompanied by dogs should be legally allowed in more places. All dogs are required to be licensed, as are firearms users. Some areas might require isolation for conservation purposes, but not all, and a fair balance should be maintained. The presence of farm dogs over most of this land leaves well-trained urban dogs in no different position, and most of the urban dogs will be microchipped anyway.

DOC at present requires dogs accessing any public conservation land in East Coast and Hawke's Bay to be trained in bird aversion, at significant cost to owners, regardless of whether there are kiwis, weak or other endangered bird species are present. This smacks of a DOC anti dog approach, and a lock-out of dogs regardless of the risks to birds.

2.3 Vehicle Access to Public Land:

Where practicable ie where vehicle or vehicle tracks can exist with little or no adverse environmental impact, access should be granted, for vehicles on such routes to access public conservation land. Such access ways should be maintained, so that damage to the environment

is not significantly unreasonable in the circumstances. Where it is withheld, this access should be contestable before a Commissioner.

The long braided rivers of the South Island are a classic example of the need for vehicular access for kayakers, rafters, fishermen and hunters. Also the high and hill country lands often separated from formed public roads by significant areas of private land eg land surrendered out of pastoral leases, North Island mountain range forest parks. Even at public cost efforts should be made to ensure better public vehicle access to public lands and waterways.

DOC usually restricts public access stringently. In South Island tenure review DOC negotiates 4WD access for its own staff. But usually denies it to the general public. There is the well known case of the Upper Ahuriri Valley, where DOC has blocked public access on the road up the Valley with a gate. There are no exceptions for 4WD public access up the Valley, a very extreme position for an agency tasked with fostering recreation to take.

A second case is the Hopkins and Huxley Valleys at the head of Lake Ohau. A legal road up the Hopkins from the Huxley Gorge gate to Monument Hut has been badly washed out by the river, and has not been repaired. DOC claims to have closed the legal road. But although 4WDs still use it, the fact that there is no marked or maintained alignment means that vehicle tracks cover far more area than they otherwise would.

2.4 Public Access Enhancement Fund:

There is no national fund available to assist improve public access. One can compare this with the Forest Heritage Fund, which was set up as a land purchase fund to protect native forest remnants. This was found so effective for protecting biodiversity that it was enlarged to the Nature Heritage Fund, and so able to purchase wetlands, tussocklands, sand dune ecosystems etc.

However, there is **no Fund available to purchase land for its access value, or for that matter for its recreational, open space, scenic, amenity or landscape value**. It is public access that is equally important in terms of public enjoyment of land and water eg for recreation, amenity. And it was New Zealand's dramatic natural scenery that was the drawcard for setting up wildland national and conservation parks, and reserves, far more than protection of indigenous biodiversity. Because DOC has become a nature preservation agency, rather than a balanced recreational and conservation agency, no such access/recreation/amenity/scenic/landscape purchase fund, matching the Nature Heritage Fund, exists.

A Fund, specifically to facilitate public access, including by means other than by land/corridor/easement purchase, is badly needed. It would give a lubricant to assist catalyse a number of public access solutions. A Fund for important recreation, amenity, scenery and landscape protection and access is also needed.

Answers to the 38 Questionnaire Questions

Q1 Aim: Proposed: *NZers have fair and reasonable access on foot along the coastline and significant rivers and around lakes*

Add **"and to public conservation land, and publicly accessible public land"**. "Public land" is in the Terms of Reference, and should have been included. Publicly accessible public land includes land the public has access rights to, such as regional parks, Crown Forest Licence Act forests, appropriate Crown owned land etc.

Comment 1.1: Add **"with a hunting firearm and/or dog"** – not all access will require or allow this. But recreational hunting and harvesting is a longstanding recreational tradition in New Zealand that is already provided for eg on public roads, marginal strips. Such access is important to a significant number who hunt recreationally. Providing for recreational hunters is part of access to public lands and waters.

Comment 1.2: Also, a very important issue is that current **public access rights for all sorts of recreational users, should be enforced** eg marginal strips, paper roads should not be obstructed or ignored etc. Vehicular access rights should also be provided where they legally exist, and there is demand.

Comment 1.3: Subdivision Access Right: This has relevance in terms of laying off of new public conservation land eg in tenure review. There used to be a section of the Local Government Act that guaranteed every parcel of land, including Crown land, had to have public access to it. But this section appears to have lapsed. Where such access does not exist, then the aim can only be reached via negotiation, and may not be possible. The legal right of public access to public land should be reinstated.

Comment 1.4: Fair & Reasonable – no blocked legal access: Sometimes public access legally exists. But obstacles on the Right-of-way eg legal road, Queen's Chain, or erosion prohibit public access. These typically include stock yards and buildings purposely built across legal roads to discourage use. There is often no simple remedy for members of the public. An obligation must exist or be created on government to assist the public.

Comment 1.5: Fair & Reasonable – direct access: Access by the most indirect route the land occupier can think up is not fair. Fair access is direct access. Both these concerns need addressing.

Q2 Proposed Principles for Walking Access to Land:

Alternative wording is proposed

1 Access should be free, certain and enduring

Comment: Where there is a legal or negotiated right. This is largely the case at present eg marginal strips, unformed public roads, formed public roads, public easements from tenure review. However, where these have been blocked, the public needs a public agency or ombudsman to assist enforcement. At present there is no agency that the ordinary citizen can turn to. (District councils usually do nothing. Eg South Wairarapa District Council at White Rock). There are powerful lobby groups wanting to block rightful public access.

2 Persons exercising their right of access should take proper care of the environment, and respect private or public property or activities. Agree

3 Information on the location of publicly accessible lands and waters, and public access thereto, should be readily available eg via paper maps (cadastrals or topo) Agree

4 Restoring lost access: (eg lost fixed marginal strips, legal roads etc) Restoring reservations and public access to them, and to public land available for recreation which do not have adequate public access, should be pursued Agree

5 Public Lands and waters lacking public access: Where there is a demand for such access it should also be pursued, either legally, or otherwise by negotiation and agreement Agree

Issues on which landholders and access users largely agree

Information about access rights:

Q3 What info should be included in a mapping database?:

a) Boundaries of all parcels of public land to which the public has access, and the name of that parcel (and where necessary its status eg Nature reserve – access by permit only). Where appropriate warnings about private land eg no shooting, permit required of Terralink's recreational map of the Kaimanawas & Kawekas shows the forest parks boundaries, Defence Dept land and private land. The LINZ NZMS 260 maps rarely show public conservation land boundaries, even

though some maps prepared by Lands & Survey in the 1970s did. LINZ does not see itself as serving the recreational public.

b) Crown Forest Assets Forests and their access roads: These are the archetypical lost lands. Public walking access rights exist during daylight hours. But no-one knows where they are. These should be shown, together with their access roads. There may well still be 800,000 Ha of such forests to which the public has access on foot, and in vehicles along specified roads, during daylight hours. See the 1989 Crown Forests Assets Act.

c) Public Accessways:

i) Marginal strips, unformed public roads along water bodies, all formed public roads.

Other roads to which the public has access eg roads through Taurewa Farm to Tongariro Power Development Scheme waters and Access 10 etc roads. All unformed public roads; private land parcels and owner names

ii) Walkways, including any access restrictions that may apply eg closed for lambing, May be closed for cultural reasons eg Mt Hikurangi Walkway. Also, if access is primarily for mountain bikes, or other specific type of recreation, this should be stated.

NB: Maps should show where other types of recreation eg cycling, horses, 4WDs can go. The default is they are not allowed to go

iii) all public access easements – Tenure Review is giving specific easements that need to be shown on maps with a specific key

iv) Vehicle Access: Where vehicle access is permitted, and any conditions, should be recorded.

Generally, where there are non standard access conditions, these should be spelt out in the database/on the map. Standard conditions for that land or access type will be the assumed default.

d) Pastoral Leases adjacent to public conservation land: Often pastoral leases block public access to public lands and waters, and access must be obtained to cross them. Information on where they are is therefore important in planning visits to such public land.

e) Private land adjacent to public land, traditionally used for access: Such land needs to be marked, preferably with contact information if it is traditionally used for access eg Kaimanawa Private land is marked on the TerraLink map of the Kaimanawas, public access up the Hodder Valley to the Inland Kaikouras.

Q4 Appropriate mix between info provided on paper maps, and over the internet:

All the relevant info should be available over the internet. Because of the possible detail, sometimes not all the detail can be shown. But where possible, most of it should be. The Terralink map of the Kaimanawas-Kawekas shows that boundaries and many access messages can readily be shown on a paper map.

What must appear:

1 Publicly accessible land and its boundaries eg Makara Escarpment Access Covenant, together with any appropriate warning eg Defence land (Waiouru)

2 The Queen's Chain: All Marginal Strips and unformed public roads along water margins. All other sorts of Queen's Chain, esplanade strips, access strips etc along water margins.

3 Public Access Easements eg from tenure review.

4 Unformed Public Roads used for public access

5 NZ Walkways, with any non-standard restraints

6 Crown Forest Assets lands and accessways - during daylight hours

Q5 What map scale is necessary to make the maps useful?:

Minimum of 1:50,000 (Cf Terralink Kaimanawas) Sometimes scale may need to be larger eg 1:25,000

Q6 What other matters are relevant to making info about access rights useful?:

- i) Possible **contact information for private owners** who need to be asked for access eg Hodder River, South Marlborough
- ii) Owner contact info of interest to hunters etc
- iii) Accident emergency numbers

Signposting:

Q7 Is signposting necessary?

Yes. DOC spends an enormous amount of public money on its track and Reserve signs and dates, even though topo maps are readily available.

If there are no signs, even with a map with access info, it can be difficult to identify tracks/access ways on the ground. A small sign to provide this link is often important. Survey the number of people who travel round with an access map. Only experienced users do.

Also, if LINZ was to change to show access ways on maps, at the rate they upgrade maps it would probably take 20 years to cover the country. So the signposts will come before the maps by a large time interval. And there will be need to update the electronic access/topo database far faster than over 20 years.

Signposting marginal strips as well as walking access, is needed. Not all people will have paper maps, or GPSs.

Q8 How extensive should signs be?

First priority: Where people are allowed. Where public access is not obvious ie signs in most cases already exist. Default is if no sign, ask.

Q9 Who should be responsible for signposting?

Whoever sees it as an important access matter. F&G have done this for fishing rivers. Whoever it is there should be a requirement for accuracy. Any agency that is accurate, and is prepared to maintain signs should be eligible. The Public Access Facilitation Fund could fund some areas eg volunteers.

Q10 Who pays for signs?

Whoever is responsible. Could include the tourism side of City & District councils (as for street naming), Fish & Game, Public Access Fund, voluntary organisations.

Code of responsible conduct

Q11 Code to apply only over private land, only public land or both?

Both. But different codes. The public land code may be a subset of the private land code.

Q 12 Should a Code be legally enforceable? If so, what should be included?

Some should be legally enforceable, some shouldn't eg misdemeanours.

The **legally enforceable code already exists**. It consists of primarily the Trespass Act, and a number of other Acts including the Forests and Rural Fires Act. If you are a hunter, the Arms Act, the Wild Animal Control Act (permission required to take wild animals, or to have a gun on land), the Conservation Act (land where permits are needed eg Nature Reserves, penalties against poaching native species etc) are the legally enforceable codes.

There are also other Acts specifically dealing with public access that may set behaviour standards for people accessing public land eg Crown Forest Assets Act, Walkways Act.

Q13 Non statutory code?

Should there be a non-regulatory code of access, focussing on promoting good behaviour through education, clarifying existing laws, and recommending best practice? **Yes.**

Such codes already exist eg DOC/Recreational NGO Environmental Care Code (ECC) for public conservation land. Then there are best practice codes for recreational safety eg Mountain Safety Council/NZ Police seven point firearms code; deerstalking, tramping, river crossing, mountaineering, ski touring etc best practice as taught on recreational user courses by national and local recreational groups. The outdoors can be very dangerous under some circumstances, and good knowledge is essential in some circumstances for survival.

It is unclear what a public access based Code would say that is not already covered in these codes and training best practices.

The NZ Environmental Care Code (ECC) was based on Federated Mountain Clubs' Minimum Impact Code, developed and published in their guide to good practice in the outdoors "Safety in the Mountains". DOC, FMC, ECO, Mountain Safety Council, Inst of Parks & Recreation Administration, and Forest & Bird developed the ECC in the early 1990s. Its 10 points are:

- 1 Protect plants and animals
- 2 Remove rubbish – carry out what you carry in
- 3 Bury toilet waste
- 4 Keep streams & lakes clean – and boil or de-contaminate suspect water
- 5 Take care with fires
- 6 Camp carefully – leave no trace of your visit
- 7 Keep to the track – where one exists
- 8 Consider others – be considerate, even friendly
- 9 Respect our cultural heritage
- 10 Enjoy your visit – protect for your own sake, for those who come after you and for the environment itself
(Leave the land undisturbed)

Most things are currently covered. But those ignorant of what is out there need to find out what already exists. The **Public Land Access code should automatically apply when recreational users access private land.**

A **Private Land Access Behaviour Code** would be useful, as this seems the main area where difficulties occur. The Code must recognise both recreational user rights, and also land occupier rights. **A major concern of land occupiers seems to be inability to enforce New Zealand's draconian trespass laws.** But this will never be possible to the extent they may like.

Criminals accessing private land for criminal purposes will not obey laws. Instead of expecting them to, land occupiers would be better advised to work with the law abiding public, to more rapidly identify lawbreaking trespassers, and neutralise them by increasing the chance of apprehension.

Land Occupier concerns: Gates left open or changed; litter, cannabis cultivation, vandalism, criminal behaviour, damage to property including fire, scaring/wounding livestock.

Public Access User concerns: Legitimate public access-ways not marked eg marginal strips, unformed public roads. Legitimate access ways blocked or made dangerous. Taking down of public access signs by land occupiers. Refusal to grant reasonable public access.

Possible Items of a Private Land Access Code:

A On the Access User:

- 1 Ask and obtain land occupier permission (specific time, date)
- 2 Call in when passing the homestead say hi. Similarly, if appropriate, when you leave

On the property:

- 3 Leave gates as found
- 4 If you need to climb fences do it in the approved way (at major posts)
- 5 Don't scare or herd stock, or disrupt or damage farm economic activity
- 6 Don't light fires without permission
- 7 Don't damage or steal property or trees. Ask if you want to pick mushrooms, berries etc on the property.
- 8 Don't write graffiti
- 9 Report any damage or risks identified to the land occupier eg fire started, fences down, stock loose, cannabis planted, strangers sighted etc to the Occupier

Health& Safety Liability: Is minimally with the Occupier

B On the Land Occupier:

- 1 Know where the public has a right of access beside or through your property
- 2 Direct people who unwittingly trespass to such right-of-ways

On the property:

- 3 Be helpful and friendly to visitors, give appropriate advice re gates etc, or warnings of hazards.

Access Agency/Commission:

Q14 The Purpose of the Access Commission:

The purpose of the Access Agency/Commission should be as:

- 1 As an **access ombudsman**, where people with complaints or concerns about enforcement of any access laws by any public agencies, and changing laws, can register their concerns, and get support in having them addressed

2 Maintaining and enhancing public access rights: The Commissioner's **brief should be all public access matters** – including all legitimate public access rights – walking, cycling, horse, with a firearm, with a dog, 4WD etc – not just access to waterways and public land. The narrow focus of this Sutton project initially to waterways needs to be broadened to all access rights

3 A **Leader in assessing and addressing public access issues**, and improving access policies and practices

4 As a leader in **promoting cost-effective public access mapping** (electronic, paper etc) to notify and assist public access. The Commissioner should not be the mapping agency however, unless the issue cannot be subcontracted, or set up elsewhere in Govt eg LINZ. It is clear that in a small country such as NZ, some government contract or backing for an mapping agency seems essential, because of the commercial risk, and the need to be seen as the authorised mapping agency, with whom recreational interests would work to update and improve access maps and maps generally.

5 As an Office with **regional representatives** that local people with public access problems can go to for advice/assistance. This would give a local face to the Commissioner, and a local presence. It is most important.

6 As distributor of a contestable **Public Access Enhancement Fund** for enhancing public access in New Zealand. This would allow public access enhancement using public funds to assist positive outcomes by a range of agencies and means. There would be an annual call for proposals eg addressing priority issues seen by the Commissioner.

7 As a **mediator, negotiator, adviser on specific public access issues** See also Ombudsman role. But would include being pro-active on significant access issues and locations.

8 A **monitor and reporter to Parliament/Government on agencies with public access** responsibilities, and including reporting on and reviewing access legislation

9 As a **contact point to facilitate and improve access relations between the rural community and recreational users** eg through holding conferences, workshops etc to improve access relations between recreational user and land occupier groups. The Commissioner would endeavour to maintain positive relations with all access stakeholders. He/she would also have a goal of encouraging greater use and understanding of recreational access to the outdoors, especially by the young.

Note: In the past, some of the above duties were provided by the Lands & Survey Department eg cadastral mapping (marginal strips, legal roads, property boundaries). The Access Commissioner we envisage would be more encompassing than the past L&S role.

Given the outdoor traditions New Zealanders have established, and the poor performance of many statutory agencies with access responsibilities, it is surprising that such an agency does not already exist.

Q15 Access Commission Organisational Form?

As a Commissioner backed by a **Public Access Enhancement Act**, accountable to Parliament. **Such an Act is essential if the Commission is to be taken seriously.**

Reasons:

1 Independence: There are a number of agencies with poorly performing public access responsibilities. Many of these could have been considered as a "home" for the Access agency. But their performance is so abysmal, that none of them qualify eg

DOC – has responsibility for the 30% of New Zealand that is public conservation land, marginal strips, access to public land and water. DOC has never taken its access responsibilities seriously. For instance it does not even know where all marginal strips are.

I remember talking to senior DOC staff about marking and showing marginal strips, and public land boundaries on maps. They assured me DOC had no intention of ever doing such a thing. DOC has a zero budget for access matters, doesn't produce maps of its land, abolished the Walkways Commission (provided public access to the countryside, established under Lands & Survey), has let the Walkway system fall into disrepair, etc.

The writer remembers hearing the current East Coast Regional Conservator, at a public meeting in Wairoa, in the mid 1990s, state DOC's interest in public access was supporting private landowners stop legitimate public access. In this case it was in stopping public marking and use of a public unformed road across Papuni Farm, near Wairoa.

DOC strongly opposes responsible motorised vehicle access to and across conservation land.

In February 2005 DOC unnecessarily stopped public access to the North End Public Land on Kapiti Island, so a private homestay operator could have monopoly access for 15 months. DOC is definitely not a suitable home for an access agency.

Ministry for the Environment – Access responsibilities to and along coasts rivers, lakes under the Resource Management Act (S 6 (d)) Matters of national importance. Minimal access achieved.

Land Information NZ: Maintains the national map and land ownership database. Responsible for Crown Forest Assets Act (the archetypal lost lands). Has an agreement with govt that makes public maps a minor responsibility. No interest in public access. In Tenure Review, where it is the lead agency, has performed poorly in obtaining adequate and direct public foot and vehicular access.

District and City Councils – charged with managing public roads including unformed ones. Also enhancing access under the RMA. Rural councils are particularly bad at their access responsibilities. Their councillors are usually wealthy farmers who strongly oppose better public access. Besides small rural councils lack resources to address access for users largely from outside their area.

None of these agencies is an appropriate “home” for an Access Agency, based on their lack of interest in their public access responsibilities. Any public funding would be diverted to other things in seconds.

The approach of being an independent commissioner answerable to parliament, and with power to criticise government agencies for non-performance, is essential to gaining better enforcement, initiatives and policy on public access.

A private Trust such as the QE II National Trust, or the Landcare Trust, would have no ability to critique or change laws or enhance public access. The QE II National Trust provides native species covenants on private land. But these have almost no public access as of right. So the Trust is not an appropriate agency to consider access. The Landcare Trust is interested in sustainable management of private land, not public access.

2 Visibility: National office in Wellington, with local representatives maintaining contact with the local recreational community and landowners.

3 Accountability: gaining its own direct funding, and Access Fund grants, and responsible to Parliament for them.

4 Focus on Public Access: This is one reason the Commission cannot be part of a larger department with a different focus. No department has an access focus it takes seriously.

5 Capacity for leadership: Needs to attract the right type of people and experience.

Dispute Resolution

Q 16 Resolving disputes between recreational users and land occupiers:

If the dispute is about commercial use of public resources eg trout fishing, gamebird access, then it is an issue for Fish & Game or DOC to address, under S 23 of the Wildlife Act, or S 26 ZN of the Conservation Act. Alternatively, for charging for fishing access, the Fishery could be closed. Certainly, the Access Commissioner could be asked to mediate. But, given the perceived value to the land occupier of privatising access, such mediation is unlikely to get anywhere.

Such disputes also arise where the access rights are leased to a private company eg Kaimanawa 1A and 2B Blocks owned by the East Taupo Lands Trust, but leased to Air Charter Taupo, access to Mt Tarawera, rights owned by a tourism company. Massive amounts of money are often paid by the concessionaire eg the Air Charter Taupo figure was not disclosed. But he laughed at my suggestion it was \$100,000/year. It is probably several times that amount. Ditto, I presume, with the Mt Tarawera lease.

The Rainbow pastoral lease, at the head of the Wairau Valley in Marlborough is a case in point too. The lessee charges \$20/car. It is solely an access charge, as none of it goes on maintaining the road. That is done by Transpower in the autumn, as the road is there to service the transmission line to Nelson. It has been estimated that there are at least 5,000 cars/year Income = more than \$100,000. There is apparently no legal road alignment through this lease, even though it is an historic trail from Nelson to Christchurch. It is likely this commercial access charge income is incompatible with the lease for grazing.

There are also significant rates to pay on large areas of back country land. In the case of Mt Tarawera, some compromise may be available for walking access. But I wouldn't bet on it. In

some instances the cost of giving up the concession income will be major, and require significant publicly funded annual payments.

Q 17 Intractable Cases:

Will arise because of commercial situations, owners exercising their rights under the Trespass Act, or Article 2 of the Treaty. These cases are partly politically motivated, so highlights their difficulty of solution. Federated Farmers campaigns to block all access rights onto private land are a pointer as to the politicisation of public access across private land – the desire to toll such activities.

Can be impossible to deal with. Serious cases eg the Rainbow Road, may require use of the Public Works Act when and where it can be used. Where an unformed public road, or other legal access may exist on the property, this may allow a negotiated solution.

Property Rights:

Q 18 Other Property Rights: None we wish to raise.

Realignment of displaced water margin access

Q 19 Do you support the realignment of water margins where they have been displaced? Yes. This would just be restoring the purpose for which the access margins were created. We now have considerable experience with movable marginal strips, and they do this as erosion occurs. This is a straightforward swap of a fixed marginal strip for a moveable one. With legal roads, maybe they should be changed to a moveable public road. There are significant issues with eroded unformed public roads around the Great Southern Lakes eg Lake Tekapo.

Q 20 Is there an alternative that would make these reserves practically useable.

Not really. Gaining certainty of the public's access right mean the best option is to change the strip to a moveable one eg with marginal strips. Pegging actual fixed strips to allow public use, is one option. But is not particularly helpful to the land occupier or the recreational public.

Gaps in Water Margin Access

Q 21 How should gaps in water margin access be remedied?

First there are issues of the importance of such gaps. In a braided river, it may be possible to wade round them, provided the bed is publicly owned. **Public ownership of beds is a more important principle.**

Second, it is useful to know how the gap arose? Is it just a bit of erosion, in what would otherwise be a fixed marginal strip, with the strip still there, eg in what is now the bed. In this case, then best to re-instate the purpose of the marginal strip with a moveable strip.

Or is it a piece of water margin that has never had a marginal strip? In which case, is the bed also privately owned (Ad medium fillum rights). This can only be addressed by negotiation, or prosecuting for profiting from charging for access to the fishery (S 26 ZN Cons Act), or closing the fishery to fishing.

NZDA supports all the five options listed. The more lines of negotiation or action the better.

Note:

1 Voluntary agreement is unlikely to be secure or enduring.

2 Held in trust for access purposes: The QE II National Trust is not concerned with access. Almost none of its covenants, primarily funded with taxpayer money, have public access rights. So, although the idea may have merit, the QE II National Trust is the wrong agency to promote and establish such access strips.

3 Esplanade Reserves or strips: These should happen automatically. But will be a rare occurrence in the countryside.

4 Acquisition of land or easements on behalf of the Crown: The bed may need acquiring too. Should not be expensive, as the current owner could still be able to graze/grow trees etc, but not obstruct access. Cf Walkways, and floodways. Needs further investigation.

5 Overseas Investment Act: Valuable where purchased property includes water margins. Should be used wherever it applies. Is in some ways a pre-emptive application of S 26 ZN, Conservation Act.

6 Other: a) **Re-align, and make current strips moveable** – see above

b) **Affirm Crown ownership of the bed**, where possible - see above

c) **Crown Pastoral leases and Crown Forest Assets land:** Should have had marginal strips laid off (10% of NZ). But this has been resisted by lessees.

Negotiated Access

Q 22 What would encourage landowners to agree to formal, certain and enduring legal access?

A contestable access improvement fund with some funds for purchase of access. Of most interest is what land occupiers think of these eleven options.

Resource Management Act (RMA)

Q 23 Creating esplanade reserves or strips on subdivision:

Yes still a very relevant mechanism. Esplanade reserves should be compulsory, and apply to all subdivisions. The sub-divider usually makes significant capital gains from the zone change, often at the expense of the community. Those buying subdivided land gain partly the amenity value of the land reserved, and access to the waterway.

Q 24 Other Mechanisms for establishing new access:

i) Review of effectiveness of LGA in achieving S6 (d) of RMA: Theoretically worthwhile, but we know its not working. Likely to take a long time, cost a lot in delays, and may not lead to effective action to achieve S 6 (d). maybe contestable use of the Public Access Enhancement Fund could help.

ii) Assistance to LAs who lack resources: Could work, and would have some fairness, as it is usually rural LAs that lack resources, and urban recreationists that seek access. Would need to have specific goals and outcomes of Nature Heritage Fund. The Public Recreational Access Facilitation Fund could provide a conduit for some funds.

iii) Remove compo requirement on Subdivisions greater than 4 Ha: Subdivision is an opportunity to address the matter. A specific need should be shown. Helping achieve S 6 (d) should help gain the subdivision approval. The owner usually maintains access to the strip, and gets grazing use of it. Plus the benefit of subdivision. Strips, rather than esplanades, are not certain or enduring, and seem to have been invented to frustrate public access, not advance it. There is the usual issue of only one “seller” ie a monopoly.

iv) Assist Local Govt with “Access Strategies”: Local govt loves wasting time on vague “strategies” that generally achieve nothing. Better to set and apply national guidelines for funding, rather than meaningless “strategies”.

v) More Central Govt guidance via NZCPS or a NPS on Access: The sad truth is that the RMA is not an effective way of enhancing public access. Urban councils do a lot now, because they are large enough and well funded enough. But few of their initiatives are under the RMA. That is why a Public Access Commissioner is so important for leadership over the myriad of acts that involve public access. **The RMA has almost totally failed public access.** Councils are usually run by developers, not recreationalists.

vi) Change Local Auth discretion to waive or reduce reserve & strip reqs: Yes, remove strips, and not allow discretion re esplanade reserves.

Access to Water Margins & other Public Land

Q 25 Improve access across private land:

All 5 mechanisms listed have merit.

- i) **Voluntary agreement:** Available now.
- ii) **Access covenants/Easements:** Not as for QE II as these almost never include public access as of right. Available now, eg NZ Walkways, but almost never invoked. Even when the Crown has some negotiating clout, eg with pastoral lease tenure land reform, it usually does not achieve adequate public access easements.
- iii) **Local Auths establish access strips:** This requires purchase on a willing buyer willing seller. Just i) again. Hasn't worked in the past
- iv) **Use Unformed Public (also called legal) roads:** Yes. Some can already be used. But may need to be marked. Over 50,000 km of such roads, giving access from the early days of settlement exist. Some, fortuitously may be across land where they can be used to swap for a similar class of access, or can be pegged and used as is. As such they are a valuable potential asset with a high quality of access – publicly owned strip. Others may be able to be negotiated to give equivalent grades of public access by more direct or suitable (to both land owner and public user) than the present alignment. Must not be relinquished.
- v) **Other:**
 - a) **NZ Walkways** are an option. Haven't been very successful across private land. Only provide walking access without a gun or dog. Public roads (unformed) are much better.
 - b) **Tenure review type access easements:** Much better than walkways. But need to be negotiated and bought. Already in existence, so a type of access right already in existence. Relatively open rights, but with vehicular use needing to be spelled out. Unclear what market cost. Preferably a one-off payment. May also have associated fencing costs.

Priorities

Q 26 Prioritising Provision of new access opportunities:

NZDA proposes a 3 pronged approach:

1 Ongoing - Rectify problems where legal access already exists: ie confirm current rights. This is the "Ombudsman" role of the Access Commissioner. It is the agencies statutorily responsible for the type of access that need to rectify the problem, eg blocking or ignoring unformed public roads and other existing public accesses. Prioritise on the basis of likelihood of success and level of use eg see 3 below.

2 Map public access-ways and Public Land boundaries on Topo maps – Already started – LINZ Minister David Parker has directed LINZ to show marginal strips on maps. Independent of other matters, so can be pursued independently. MAF pursuing the same matter. Terralink may be a better option, as it already provides good recreational access on maps.

3 New Access Opportunities: Call for expressions of interest for new access ways from the public. Prioritise by a score including estimated current and future use, value of the new access eg directness over other alternatives, willingness of landowner to negotiate, likely cost, availability of unformed public roads, who is the liable agency? LG?, DOC etc, willingness of DOC or LG to contribute etc

Q 27 Who provides funding & to what level?

There are a number of sources.

1 DOC should have an access policy for public access to public conservation lands and water. Provision for fostering public recreation is supposedly a high priority for DOC (though we have yet to see any sign of this). DOC should consequently fund its access. The fact DOC has chosen not to fund public access in the past should not obscure the fact that it should.

2 Local Government also has an obligation eg under S 6 (d) of the RMA, or for public recreation. Larger councils often do a good job of this eg Wellington City Council, Auckland Regional Council

regional parks, Wellington Regional Council regional parks and forests, Auckland City Council. Provision of public open space – to which the public has access - is also a council responsibility.

3 As well though, the Public Access Commissioner (PAC) should have a **Public Access Facilitation Fund**, which can be used for negotiated new access provision. This for instance should be mostly available for the poorer rural local bodies, or for specific negotiations the Commissioner feels he needs to undertake directly. The amount of this fund is unclear. NZDA proposes an **initial figure of \$10 million annually** be available for all the PAC's facilitation of access including new access.

Q 28 Can your organisation assist in setting priorities?

Yes. NZ Deerstalkers' Association is a national body, and has 53 branches, as well as associate hunting clubs, and 6100 members spread throughout New Zealand. NZDA is already running a "Hot Spot" column on areas where public access needs to be improved. We are also very interested in public access that allows carrying an unarmed firearm.

Through our network we can identify problem access-ways, or areas where hunter access is lacking or inadequate. We are very pleased to assist a Public Access Commissioner, or government agencies such as DOC, in setting priorities for achieving better public access to public land, especially when carrying a firearm, or taking a dog.

Unformed Public (Legal) Roads

Q 29 What problems with marked unformed public roads traversing private farmland or forests?

For users –

- a) Knowing where the **centreline** is – ie road marked on the ground, and agreed with the adjacent landowner. Very few public unformed roads are marked on the ground. Adjacent owners tend to remove markers. Those that do not co-operate could be charges for grazing. Fencing is very expensive. But may be appropriate in some situations.
- b) Negotiating **areas of the road that may have eroded, or been blocked**, eg by forest plantations
- c) **Crossing fences, gates or other farming or forest obstructions** that are on the road alignment eg forest plantations, slash from milling, cattle yards, buildings purposely built across legal roads, deer fences etc
- d) Being **allowed to use the public road at times of high fire risk** eg in private forest plantations – public roads are not closed during times of high fire risk. There should be a buffer between public unformed roads and plantations, just as there are around formed public roads
- e) If a formed road follows the line of the public road, **identifying where the formed road deviates from the public road alignment**. Usually such formed roads do this so that the landowner can deny use of the public road. Some go through cattle yards built across them for the express purpose of blocking legitimate public use eg Birchwood homestead, Ahuriri Valley.
- f) **danger from stock, or agricultural or forest plantation operations** (eg burn-offs, tree felling, bulls) to pedestrians or cyclists

As well all outdoor hunters are concerned that there are moves to disallow people with disarmed recreational firearms from travelling on unformed public roads.

An unformed public (legal) road has the same legal standing as a formed public (legal) road for public access. The latter includes the right for New Zealand's 240,000 legitimately licensed firearms owners to carry firearms at will for all proper purposes. It should be remembered that NZ has one of the lowest firearm misuse rates in the world and how this has come about is not something that should be changed frivolously.

Many public land areas; lakes, rivers, estuaries, forests, mountains etc., are only connected to the formed road via such unformed access strips and are totally isolated otherwise. If the right to carry firearms along such access strips is negotiated away, then hunters will not be in a position to pursue their recreational harvests, and to assist DOC harvest big game or other animals from public conservation lands.

DOC have admitted that fully 90% of all big game wild animal control on their land is done by recreational hunters. Anything that would impede or restrict this access will thwart such recreational hunters from harvesting deer and other game animals and gamebirds. The resulting population problems caused by animals regarded as pests when numbers get above carrying capacity, will then fall back onto the various authorities owning such land, because of not being able to provide adequate access. In many cases, the taxpayer will ultimately have to fund very expensive animal control, because the present free harvesting service is not adequately provided for.

We ask that you give particular consideration to maintaining the right of gamebird and game animal hunters to access such herds and flocks on public land, with their firearms and without let or hindrance, apart from permits, where required. **The capture of public resources, by the restriction of access, is a very real problem that must be carefully guarded against by your panel.**

We do not tell landowners what sort of vehicles they can and cannot use to legally access their run-offs. The public domain is the public's "run-off".

We ask that the present provision for firearm carriage for all proper purposes along all guises of unformed legal roads remain the same as for formed legal roads. The 1983 Arms Act, the Wild Animal Control Act, 1977 etc., make ample provision for prosecuting anyone who would misuse such firearm carriage rights for uses other than proper ones.

Closure of any public access to legally licensed firearms owners should be subject to review by a new Access Ombudsman / Commissioner or the equivalent.

User groups, including hunter groups and organizations, could draw up a priority list for access to be created to public resources such as game animal herds, and that such a list be used to purchase land.

For Landowners: Best they set out their concerns, given usually they have usurped use of the road as if it were part of their property, without paying any rent for it.

For local councils: Ditto.

Problems District Councils say they have include:

1 Evading responding to complaints from the public over blockages to public roads eg Fence and locked gate across the coastal road at White Rock, near Cape Palliser. NZDA has written to the South Wairarapa District Council asking them to allow vehicular access on this road. We have yet to have any real response.

NZDA also knows of locked gates blocking legal roads to public land in the Gisborne district.

2 Not knowing where the road is or whether they have responsibility for it. (South Wairarapa DC claim they don't know the parentage of the White Rock coastal road, or whether it is their responsibility – we can forward NZDA's correspondence with them)

Q 30 Dealing with deer fences and other obstructions on public unformed roads:

Cut them down. They are illegal blockages. The landowner has had use of the land without paying a rent for it. And has abused due process by blocking it. Prosecute him. Increase fines for blockage.

Notification and warnings would be a first step. At the Wairarapa Public Meeting, some farmers raved on about how people trespassed on their property and how terrible it was. Then they said all unformed public roads should be removed from their properties immediately, with them getting the land free. There should be little patience with their uncompromising approach of “Me First”, “Me Second” and “Me Third”.

It is not acceptable to have small gates, big enough for a dog to get through, put in a deer fence. Remember the public has a right to drive a 4WD along such a road. An opening vehicle gate is needed.

Q 31 Managing weeds, pests and environmental damage on unformed public roads:

Just as one does on formed public roads. In most cases, unformed public roads will have just been rolled into the adjacent owner’s farm. It is public (Crown) land being squatted on. He has had the use of the grass since probably time immemorial. Farmers that rabbit on about this issue are in denial.

Q 32 Negotiating Unformed Public Roads for alternative access:

Any alternative access must **have the same status and purpose as the current legal road** ie available to hunters with firearms, dogs, cyclists. 4WD, horses. No current user should be inconvenienced or removed.

Those that are marginal strips should be considered as being made movable. Those that are not should be replaced by alignment along a formed farm or forest road. When these now unformed roads were initially laid off, it was to give access to proposed settlements, and sections. They are Crown land, managed by the District Council, that can only be removed by a public consultation process that agrees they no longer have a use. They are very important opportunities for access in most cases, even today.

Health & Safety liability of landholders

Q 33 Farmers only

Fire Risk and Liability

Q 34 Dealing with fire risk:

It is ironic that the most common cause of rural fires is, and has been since at least 1983, fires lit by occupiers that get away eg to burn off before winter when there is a late summer drought. Fires accidentally started by recreational users are low on the list of causes. Then there is arson by a criminal. But that is likely to happen anyway, regardless. The biggest fire to get away was one that burnt 16,000 Ha from a farm north of Taihape, Otanewairua Station. It almost burnt across Hawke’s Bay, in February 1983. The cause – a helicopter pilot using napalm in a “controlled” burn for the landowner during a drought that he left before seeing that the fire was out.

Often fire risk is a convenient excuse for denying access. NZ Deerstalkers’ Association, on Branch hunting trips, have a \$5 million personal liability insurance, including exemplary and punitive damages, and a \$1 million extension to cover Forest & Rural Fires Act liabilities. Members have a duty of care, of course, not to carelessly start fires etc.

Then again, given most escaped fires are started by the land occupier, maybe “recreational trespassers become a convenient boggy man to carry the can for escaped fires. The Forests and Rural Fires Act puts this liability on the land occupier with good reason.

Q 35 Land Occupiers Answer needed – Biosecurity risk.

Rural Crime and security

Q 36 & 37 Community ideas for combating rural crime

NZDA has some sympathy for land occupiers and the risks from rural crime. It is well known that criminals steal stock eg in the Manawatu, and in the rural urban fringe around metropolitan areas eg Makara. There are also sea fish poachers and cannabis growers. However, home invasions, assaults and crime are also part of urban living.

All NZDA can offer is greater contact between the law abiding recreational community and the rural community, and voluntary and statutory codes of conduct that requested that those on a property with permission, actively be eyes and ears for the land occupier in terms of stopping or reporting criminal activities. Rural owners often go out of their way to help recreational users who have accidents or other misfortune. The least recreationists can do is reciprocate on crime etc issues.

Maori Land and Maori issues on non-Maori land

Q 38 Maori land issues:

Maori trusts are among the most aggressive in raising money from their lands from access charges. But there are non Maori that do it too – eg Rainbow Station, Wairau Valley.

Non Maori first: Rainbow Station in the head of the Wairau Valley, Marlborough, charge a \$20 vehicle fee to cross their Crown Pastoral Lease, on the TransPower access road from Rainbow to Hanmer Springs. For some unknown reason there is no public legal road line along the valley, in spite of it being an historic stage coach route between Nelson and Christchurch. This is a direct access charge, as Transpower maintain the road, usually in late autumn. Rainbow station pays nothing to our knowledge for road maintenance.

The number of vehicles over this road that pay could well be in excess of 5,000/year an income of \$100,000 from access fees per year. The fact that this lease is Crown owned adds insult to financial injury.

Three examples of Maori charging for access: This is usually done by having a tender for a concessionaire to get the exclusive rights to allow access eg for deerstalking, or scenery, or plane landings. It is then the concessionaire who charges his clients enough to cover his annual fee to the land owner, and gets trespass rights in return.

1 Mt Tarawera: Charge of \$120 for climbing to the top of this national scenic gem.

2 East Taupo Lands Trust land, Kaimanawas: Concessionaire Air Charter Taupo. Charges for fixed wing and helicopter access. Fee for walking access is \$30 for a year. But every access must be authorised beforehand, and must avoid hunting parties that also lease hunting blocks.

3 A Tuwharetoa sub trust charges \$30/year for anyone wanting to cross 200 metres of their land to access Waihaha River Mouth on Lake Taupo.

Conclusion: Need for urgent political action:

This consultation has dragged on since January 2003. The longer it has gone on, the more the need for change has become evident. The strong arguments put forward in this submission, and in similar submissions by recreational groups and individuals make a very strong case for government to proceed. The Panel owes it to the public to push for a Commissioner, a Public Access Facilitation Fund and empowering legislation. There are significant benefits both to recreational interests and land occupiers in setting up a proactive system fair to both groups, as proposed in this submission.

It is also essential that the Public Access Commissioner is backed by legislation, eg a Public Access Enhancement Act establishing the office. Without this the Office will not be taken seriously.

NZDA is happy to appear in support of this submission, or to provide further evidence in support.
Thank you for the opportunity to comment.

Yours truly

Dr Hugh Barr
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For NZ Deerstalkers' Association