OUTDOOR WALKING ACCESS

ANALYSIS OF WRITTEN SUBMISSIONS

WALKING ACCESS
CONSULTATION PANEL

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Foreword

The Walking Access Consultation Panel welcomed public comment on its consultation document *Outdoor Walking Access* at public meetings and in written submissions. The Panel was very impressed with the level of interest and the many valuable and challenging comments and suggestions.

This report was undertaken by an independent analyst. The Panel used this analysis, in conjunction with reading the submissions, to inform its discussions.

This analysis sits alongside the comments and opinions expressed at public meetings. The notes of those meetings are on the Panel's website.

I am very conscious of the time and effort it takes to write submissions and attend meetings.

The Panel greatly appreciates the extremely thoughtful submissions and opinions it received.

The Panel considers that its report *Outdoor Walking Access: Report to the Minister for Rural Affairs* builds on the public submissions and provides a way forward to achieve the aim of providing free, certain, enduring and practical access for everyone who lives in this wonderful country.

John Acland
Chair of the Walking Access Consultation Panel
Mount Peel Station, Peel Forest
February 2007

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Summary

The Ministry of Agriculture and Forestry (MAF) received 1397 submissions on the Outdoor Walking Access consultation document.

Very broadly, submitters' views fall into two categories.

1. Enhance public access, largely through having clearer and more certain access arrangements and preserving New Zealanders' ability to make recreational use of the outdoors. This view is expressed largely but not exclusively by submitters with recreational interests.
2. Retain the status quo, particularly in relation to voluntary negotiation of any new arrangements and access users asking landholders' permission to cross private land. This view is expressed largely but not exclusively by submitters with landholding interests (including farmers, iwi and industry groups) and some local authorities.

These views are not entirely mutually exclusive. There are also areas where submitters across interest groups express similar views. Most submitters generally agree on the following matters.

- **Information** – Mapping and signposting of public land needs to be improved.
- **Code of conduct** – A code of conduct should apply to both private and public land.
- **Access agency** – An access agency should be formed, using the model of a commissioner accountable to Parliament. Bureaucracy should be minimised, all interest groups should be represented, a regional presence should be included and the agency should be politically independent.
- **Funding** – Funding for new access should come from central government.
- **Dispute resolution** – A mix of methods should be used for dispute resolution, depending on the circumstances. Mediation, as an approach, is supported by many submitters across interest groups. Disputes about access over public land can be addressed though existing legislation. The Trespass Act 1980 should be reviewed to provide a more workable base for regulating access.
- **Public access over private land** – Public access should be enhanced where private land is involved through voluntary negotiation and agreement with landholders. Landholders should not incur costs from providing public access. Landholders should be able to close or restrict access at certain times. A landholder should not be compelled to negotiate access over private land, but, if private

land has particular value for public access, then that land may be purchased using the Public Works Act 1981.

- **Unformed legal roads**[1] – Public access on unformed legal roads, while legal, may be more complicated in practice. Local government may face significant costs associated with access on unformed legal roads. Overall, many (but not all) submitters consider that a framework is required to assess such roads in relation to their access value, and that not all unformed legal roads need have the same usage. Most submitters consider that obstructions on unformed legal roads can be addressed through negotiations with landholders to achieve passage. In general, submitters consider that a combination of agencies (and individuals) may contribute to keeping such roads free of weeds. Most submitters consider there is scope for stopping unformed legal roads in exchange for alternative access.
- **Health and safety** – In general, landholders should not be liable for accidental injury to recreational access users and such users enter private land at their own risk. The Health and Safety in Employment Act 1992 needs to clearly state liability and responsibility in specific situations.
- **Biosecurity and fire risks** – Landholders should not be liable for fires started by the public entering or crossing their land. Increasing public access will exacerbate biosecurity risks through greater opportunities for the spread of weeds, pests and diseases. Restrictions on access due to fire and biosecurity risks (such as currently exist) would be accepted.
- **Māori land** – Māori land should be treated in the same way as all private land, that is, access users should request permission.

Submitters' views range more widely on the following matters.

- **The aim and principles of the Panel** – Many submitters want (variously) the terms used in the aim to be clarified, and want the aim to specifically address all recreational users (and all modes of access) and all public land, and to take into account private property rights, Māori values and protection of the natural environment. Similarly, the majority of submitters give only qualified support to the principles.

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[1] An unformed legal road is land legally set aside as being road, but not formed as road. That is, it may be unsurfaced, unfenced and often indistinguishable from the surrounding land but it is still subject to all the legal rights and obligations that apply to formed roads, including the right to pass and re-pass with or without vehicles and animals. Unformed legal roads are also known as paper roads.

- **Information** – Submitters are divided on the extent of information that should be provided in a mapping database, particularly in relation to landholders' contact details and identification of unformed legal roads.
- **Dispute resolution** – Submitters do not agree on whether mediation should be voluntary or binding.
- **Property rights** – Submitters with landholding interests are concerned that changes to current public access arrangements pose risks to their ability to manage their land and to property values. Submitters interested in accessing public land are concerned that this access is being increasingly limited and that changes are required.
- **Resource Management Act 1991** – Submitters are divided about whether the Resource Management Act is an appropriate mechanism for creating new water margin access: many who consider it appropriate think that it is not being properly utilised, while others think that it is flawed because it is slow to deliver public access or, conversely, because it is a breach of property rights. Thus, in relation to the measures suggested in the consultation document, submitters' views range widely – some want the Resource Management Act amended to enhance access, while others oppose any amendment that might automatically establish esplanade reserves or strips.
- **Priorities** – Many submitters with recreational interests favour the establishment of an access agency (or commissioner) as a priority, while other submitters consider that existing public access should be identified and established first.
- **Unformed legal roads** – Access users think that mapping and signposting unformed legal roads will greatly improve access. However, landholders are concerned that land management will be hindered if all unformed legal roads are mapped. Recreationists wanting to use vehicles on unformed legal roads do not want such roads to be exchanged for alternative forms of access that offer lesser rights to users. (Most submitters consider there should be some restrictions on vehicle use on unformed legal roads for environmental and safety reasons.)
- **Rural crime and security** – Submitters are divided on the effects that increasing public access would have on crime in rural communities. Many access users believe people using accessways would deter criminals, while many landholders express safety and security concerns. Submitters suggest ways to minimise criminal activity in rural areas, but landholders do not support a number of these suggestions or consider them to be inadequate.

- **Wāhi tapu and rāhui** – All submitters who comment on wāhi tapu and rāhui agree that sites of cultural importance to Māori must be respected, recognised and protected. However, some submitters consider that this would be better achieved if such sites had signs and perhaps also fences, while other submitters note that the location of wāhi tapu are traditionally held on "silent files" and local consultation is the most appropriate method of negotiating access.

Additional matters

In addition to responding to the Panel's questions, submitters comment on the following matters.

- **All types of access** – Some submitters want the Panel to consider the access rights of all users, including those with vehicles, firearms and dogs (with firearms being disabled and dogs leashed while travelling to hunting areas). However, other submitters support walking access only, while others suggest limited or restricted access. To mitigate confusion and potential for conflict, submitters suggest classifying each access route; including information on vehicles, firearms and dogs in a code of conduct; having a permit system for users or a vehicle identification system; and vehicle users asking the landholder for permission. Hunters are concerned that the access they have now is not reduced as a result of this consultation, particularly on unformed legal roads.
- **Exclusive capture of fish and game** – Many submitters with recreational interests are concerned about "exclusive capture" of fish and game resources (where private land prevents access to public land or waterways, and landholders reduce or prohibit access in order to exclusively use the resource themselves or sell access for profit). Addressing exclusive capture is considered by submitters to be a problem for an independent third party, such as an access agency. Some submitters suggest that exclusive capture be legislated against.
- **Charging for access** – A few submitters raise the issue of landholders charging for access where fish and game are not (necessarily) involved. Some of these submitters oppose any charging for access because it is socially divisive; others may accept such charges depending on the circumstances, for example, where a landholder is providing services or incurring particular direct costs.
- **Natural environment** – Submitters from all interest groups express concern about public access adversely affecting the natural environment, and want mitigating actions to be taken.

1 Background

1.1 Establishment of the Walking Access Consultation Panel

In August 2005, the Government appointed the Walking Access Consultation Panel to carry out thorough consultation with interest groups and the public. The Panel was asked to reach, as far as possible, agreement on walking access along the coast, significant rivers and lakes, and to public land that is surrounded by private land.

The Panel started with the views expressed at consultation meetings with stakeholder representatives, Māori and the public, and in the many written submissions received in response to the Land Access Ministerial Reference Group's 2003 report *Walking Access in the New Zealand Outdoors*.

1.2 Consultation

During May, June and July 2006, the Panel held 43 consultation meetings throughout the country. The meetings were an opportunity for the public and stakeholder organisations to talk to the Panel about the issues and solutions discussed in the Panel's consultation document *Outdoor Walking Access*, which was published in April 2006. The Panel also established a website (www.walkingaccess.org.nz) called for submissions from the public, and met with interested organisations to have more in-depth discussions about the access issues affecting the membership of those groups.

1.3 Analysis of submissions

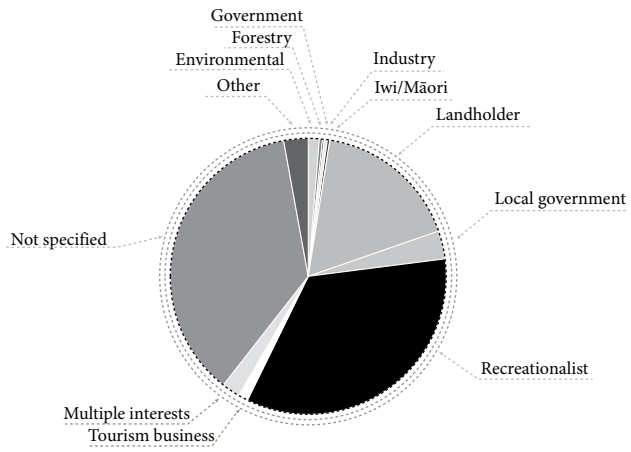
The summary of submissions has been prepared according to the chapter headings and questions of the Panel's consultation document. As submitters' views and comments did not necessarily follow the consultation document's submission template, and many issues were referred to repeatedly throughout submissions, there may be some topics that feature in several chapters.

This document provides an overview of submitters' opinions, not a critique of submissions. The analysis focused on representing the full range of views expressed by submitters rather than on the numbers of submitters with a particular view. Indeed, accurately counting the number of submitters with a particular view was not possible as some submissions were from clubs with an unknown number of members. Note also that some submitters did not answer every question posed by the Panel. However, this analysis does give some indication of the depth of support for particular views, with the use of terms such as many, some or a few.

Quotes have been used in this report to give a deeper sense of submitters' views. As is indicated in the report, the quotes may represent the opinions of many submitters or only one. Occasionally, ellipses have been used to reduce the size of the quote but care has been taken not to alter the sense of the original text. In the interests of privacy, individuals' names have not been supplied.

Where possible (and relevant), the interest group of submitters is also been stated (for example, recreationists, landholders, local government, iwi). However, as shown below, approximately a third of the 1397 submitters (as at 30 November 2006) did not specify an interest group in their response.

Figure 1: Proportion of submissions received from various interest groups



2 Aim

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.

Questions asked of submitters: Does the aim capture the two, often conflicting, values that many New Zealanders hold dear: access to our many natural recreational resources and having our very own piece of dirt? If not, how could the aim be improved?

2.1 Key points made in submissions

- Some submitters simply agree or disagree with the aim. Overall, however, the majority of submissions provide qualified support for the aim.
- It is not possible to give an indication about how many submitters generally agree or disagree with the aim, as some submitters do not specifically answer this question. Also, in many cases, submitters who variously state that they disagree, partially agree or agree entirely with the aim nonetheless express similar views, for example, about the need for the terms used to be clarified. Note that submitters' comments reflect their concerns and questions rather than the aspects of the aim they support. Hence, it may be assumed that most submitters agree that access should be "on foot".
- In addition to those submitters who simply agree or disagree with the aim, submitters' views fall into the following categories.

  1. There is a need for further information and/or clarification of terms used in the aim:
     - the terms used in the aim need to be defined, particularly "significant" and "fair and reasonable";
     - more information needs to be provided to judge whether any change to current access arrangements is required.
  2. The aim should be broadened to include:
     - all people (not just New Zealanders);
     - all recreational users;
     - all modes of access;
     - access to all public land;
     - access to public land surrounded by private land;
     - access to and along all waterbodies.

3. The aim should specifically encompass consideration of:
    - whether access is practical;
    - public safety;
    - protection of the natural environment;
    - private property rights;
    - overseas tourists accessing public land;
    - public land, and specifically public land surrounded by private land;
    - landholders charging fees;
    - walkers with dogs.
4. The aim is inconsistent with:
    - Māori values;
    - private property rights;
    - protection of the natural environment.
5. The status quo is adequate, particularly in relation to the public asking to access private land.

2.2 Need for further information and/or clarification of terms used

Many submitters, irrespective of whether they broadly agree or disagree with the aim, consider that further information and/or clarification of terms used should be provided. In particular, these submitters consider that the terms "significant" and "fair and reasonable" require quantification to reduce uncertainty. Submitters consider that leaving these terms unquantified is likely to be "a feast for lawyers" or to allow the continuation of subjectively granted or restricted access.

2.2.1 More information required

A few submitters feel that the scope of the access issue has not been sufficiently researched to demonstrate that any change is required. Some of these submitters would like to see an assessment done on the number and nature of access issues around New Zealand.

> No information has been provided to demonstrate the extent to which people already gain access to the coastline, significant waterways and public land. It is possible that fair and reasonable access is already provided to New Zealand walkers.

Additionally, some submitters feel that a cost–benefit analysis should be carried out before any changes are made.

2.2.2 Clarification of terms

Many submitters want the subjective terms used in the aim to be more closely defined. Most of the submitters with these concerns feel that "significant" relates to the physical dimensions of the waterway and should be defined by the width of a river. However, submitters also suggest "significant" can relate to cultural significance or to recreational opportunities.

A suggested definition draws on the Resource Management Act 1991 (in relation to the creation of esplanade reserves), that is, three metres in width at fullest annual flow. Another suggestion was that a waterway should contain a resource able to be used (such as a fishery) or provide an access corridor to an area of public land or resources where no alternative access exists. A further suggestion is that the wording of the aim be changed to "all waterways".

Some submitters also have concerns over how the terms "fair" and "reasonable" might be interpreted. These submitters think that different interest groups will have different perspectives on these terms, and they should not be left open to interpretation.

> Any ideas about, and practicalities of, "fairness and reasonableness" are unlikely to be common across New Zealand and can differ greatly from area to area.

One suggestion was that the phrase be changed to "practical and usable permanent access". Another was that the only "fair and reasonable access" is full access (that is, the completed Queen's Chain), guaranteed as a New Zealand citizen's right.

2.3 Broaden the aim

Many submitters feel that the aim should be broadened to include a greater range of physical features, user groups and modes of access. Some of these submitters want the aim to specifically include "all public lands", and particularly those public lands surrounded by private land. Other submitters refer to currently inaccessible lands administered by the Department of Conservation (DOC). Many submitters want the aim to include access both "to and along" all waterways and public lands. A few submitters feel that access should be to all water margins, irrespective of whether the land is in public or private ownership.

Some submitters point to section 6 of the Resource Management Act 1991 to provide a definition.

> The aim should be consistent with section 6(d) of the Resource Management Act. Our amended aim is therefore: That New Zealanders have fair and reasonable access on foot to and along the coastline, rivers, lakes and public land.

Submitters also want the aim to encompass access to historic sites and unique landscapes. A few submitters want urban areas to be specifically mentioned.

Many submitters want the aim to include all recreational users, and specifically hunters (with firearms and dogs).

> Why is it that the Panel addresses access to public land and waterways for recreationists, yet hunters have been excluded from the Panel's considerations? Hunters should be treated no differently from other recreationists who want to access public lands. I believe that where it is necessary for hunters to cross private land to get to public land, and there is a concern about guns and dogs, then dogs should be kept on a leash, and guns fully enclosed in a gun slip with harsh penalties for breaches.

A number of submitters want tourists included in the aim.

> We feel that all persons residing and visiting NZ should be included in the aim as many tourists visit NZ with the intent of walking and hiking.

Some submitters also want access for all recreational users and modes of access, including those using vehicles, bicycles and horses.

> I consider that it should include mountain bikes and horses – not just walking – non-motorised access.

2.4 Further consideration required

Some submitters have questions about areas not specifically addressed in the aim. As access to public land generally was not mentioned in the aim, some of these submitters want this to be clarified.

> The aim ought to better reflect the types of access the Panel seems keen to promote, namely: access over private land to water margins, access over private land to public land and access over existing unformed legal roads.

Submitters also ask about how the aim relates to existing access arrangements. For example, is a formal arrangement required if a goodwill arrangement is in place currently, and what happens where access to an area is provided for a fee as part of a business?

Some submitters also want the aim to take account of whether access is practical and safe. Other submitters want to know how consideration for natural environmental values might affect the aim.

Some submitters also want the aim to be specific about whether walking access includes walkers with dogs or firearms, and whether tourists to New Zealand are included.

2.5 Aim inconsistent with other values

In addition to those submitters who support the status quo, there are submitters who feel that the aim is inconsistent with other values, such as private property rights. There are also submitters who think the aim

contradicts Māori values, and submitters who express concern for the natural environment.

2.5.1 Private property rights

Many submitters disagreeing with, or giving only partial support to, the aim feel that there is insufficient recognition of the rights of private landowners. Although some of these submitters do not oppose changes to current public access arrangements, they are concerned that the aim does not explicitly uphold private property rights.

> [The aim] doesn't do enough to protect the rights of landowners. It should also be made clear that the aim is NOT to open private land to public recreational use, but to provide access to coastline, significant waterways and existing legal unformed roads. [emphasis in the original]

Many of these submitters are concerned that the aim implies that landholders' discretion about who is on private land is at risk, that businesses operating on the land and personal security may be at risk, and that land may be in effect taken without negotiation, agreement and compensation.

2.5.2 Māori values

Some submitters feel that the aim is unacceptable as it is "completely inconsistent with the Māori values system". This is commented on further in section 21 in relation to the Panel's specific questions about access rights to Māori land.

> The Crown as Treaty partner has an active duty to protect Māori people in the use of their lands and waters to the fullest extent practicable. This is an active duty and one that the Crown cannot abdicate by a side wind. The aim of the Panel should be to work with tangata whenua to ensure that such "fair and reasonable access" does not impact upon customary rights, resources and sites.

2.5.3 Protection of the natural environment

Some submitters note that access to the environment has an impact on the local ecology, and that this effect needs to be taken into account. Accordingly, they say, there will be some areas of particular ecological value or fragility where public access should not be allowed or increased.

A few submitters specifically object to the provision of access along all waterways.

> We oppose the Government's proposal to create legislation providing public access along waterways, on the grounds that wildlife – in particular native fish and aquatic invertebrates – use riparian margins for spawning, pupation, and for completing their life cycles. That is, riparian margins are ecological "hotspots" where wildlife should not be disturbed during essential phases of their life cycles.

> For this reason, placing public walking paths along the margins of streams is not ecologically responsible.

2.6 Status quo is adequate

Some submitters want to retain the status quo. This view is expressed particularly in relation to accessing private land. Submitters consider that it is necessary for landholders to know who is on their land for reasons of business management and security and for public safety. Further, these submitters feel that permission is generally granted to those seeking access.

> The public is denied free access to all other working premises, eg industrial factories, offices, and business premises in general. Our business should be treated no differently. The present system, in our opinion, is working very well. Generally, when access permission is requested, it enables the farm owner to advise the walker of any issues relating to the land. This is a win/win situation for all concerned. We feel that the status quo should remain.

A few submitters question whether there is widespread loss of public access, while others consider that there is sufficient access to a considerable amount of existing public land. Some submitters consider that there is no public pressure to change existing arrangements, and that most New Zealanders respect private property and do not expect to cross private land. The view is also expressed that, as the majority of New Zealanders do not want any change to existing arrangements, it would be undemocratic to make any changes.

> We do not think that an access strategy is required at all. The last Land Access Ministerial Reference Group (2003) admitted in its report that there was no great push from the public on the matter. It is only certain groups … that are keen. The public already has outstanding access to most parts of the country's foreshore (sea, rivers and lakes) either on foot or by boat.

A few submitters consider that the means already exist to deal with access issues. Their view is that there is no current conflict in relation to access where public land is involved, and that the New Zealand Walkways Act 1990 is an existing means for access across privately owned land.

Some of the submitters wanting to retain the status quo nonetheless feel some consideration should be given to using four-wheel-drive vehicles, and to completing the Queen's Chain.

A few submitters consider that access to all possible waterways and public land is not practical or necessarily desirable.

3 Principles

The Panel proposes that a framework and solutions for walking access be guided by a set of principles that are applicable generally and reflect the aspirations and values of both users and landholders. The proposed principles encompass quality of access, information and maps, reinstating lost access, establishing new access and respect for property and the environment.

Question asked of submitters: Do you agree with the proposed principles? If not, please be specific and suggest any alternatives.

This section first presents a list of key points made in the submissions about the principles. It goes on to present an analysis of support for the five principles in general, and then discusses the individual principles in the order they were proposed.

3.1 Key points made in submissions

- In relation to the principles generally, more submitters agree to some extent with some or all of the principles than disagree entirely. However, the majority of submitters provide caveats to their agreement, give additional comments or express concerns about all or some of the principles.
- Those identifying themselves as having recreational interests are more likely to agree than other interest groups, such as industry, iwi, landholders and local government.
- Additional points that submitters would like included are:
  - broader access in terms of both the land specified in the principles (public land must be specifically included in all principles where it is omitted) and user groups;
  - explicit protection of property rights, particularly that landholders have the right to exclude people from private land;
  - enforcement of public access where negotiation fails;
  - attention to environmental values, public safety and costs of enhancing access.
- In relation to specific principles:
  - it should be acknowledged that there are costs to providing access even if there is no direct charge to the user;
  - certain and enduring access may be generally preferable but flexibility is required;
  - users should respect public and private property and activities; however, nothing in the principles ensures they will do so;

- having accurate information is essential but this may be difficult to achieve;
- information and maps may need to be supported by signage on the ground;
- reinstatement of lost access or creation of new access "to and along water margins and public land" should be achieved through negotiation and agreement with landholders;
- loss of land or property rights should be compensated;
- reinstatement of lost access or creation of new access may conflict with environmental values, particularly that the banks of waterways should be planted.

3.2 The principles in general

More submitters agree to some extent with some or all of the principles than disagree entirely. Those identifying themselves as having recreational interests are more likely to agree than other interest groups, such as industry, iwi, landholders and local government.

Some submitters simply agree or disagree with all of the five principles proposed, although the majority of submissions provide caveats to their agreement or disagreement, give additional comments or express concerns about all or some of the principles.

Some submitters want broader access in terms of physical areas and users. This includes a clear statement that all public land, including the conservation estate, should be accessible, and the specific inclusion of unformed legal roads and tracks as a means of access. These submitters also want all users to be included, including those in four-wheel-drive vehicles and hunters with dogs and firearms. Some submitters are concerned a new approach to access may lead to reduced access for users other than recreational walkers, particularly hunters.

> Whilst we strongly agree with the five key principles outlined we hold some concerns that the document does not adequately capture the specific issue that allows hunting to occur, ie access with firearms. It also fails to deal with vehicle access issues with this form of access being of considerable use to hunters, eg access to high country rivers for tahr hunting.

Many submitters would like to see an explicit statement acknowledging the legal rights associated with private property. In particular, it is considered landholders must have the right to exclude people from private land. (Some submitters supporting this view make an exception where people are traversing private land to get to public land.) These submitters consider landholders should be able to withdraw access when conditions such as lambing dictate. Some specifically state that access should still require a phone call to landholders to ask permission

to cross private land. Some submitters agree with the principles if they refer to public land only, while others find the principles acceptable where they are not prejudicial to landholders.

In particular, these submitters consider that any access over private land must be the subject of negotiation, agreement and, for some submitters, compensation.

> We oppose land access across Māori land and general land owned by Māori including any extension of the Queen's Chain to the coastline and waterways on Māori land or general land owned by Māori without negotiation and agreement from the owners concerned.

Other submitters disagreeing with the principles generally consider that there is sufficient public land available now for recreationists, and that more conservation land could be made accessible to the public. Similarly, some submitters disagreeing with the principles feel the case has not been made for any change to current access arrangements.

A number of submitters feel that the principles need to address failure of negotiation for public access, and feel that landholders should be compelled through legislation to settle access issues, with (it is generally agreed) compensation. Some of these submitters point out that the principles still allow landholders to exclude the public even when access does not impinge on landholders' business operations or privacy. A few submitters specifically state that access should no longer require a phone call to landholders to ask permission to cross private land.

Another view, disagreeing with the principles rather than opposing enhanced public access as such, is that there are too many variables involved in the range of access to allow for a blanket approach.

> No. I really don't feel that there can or should be a "blanket" law or ruling for all coastline or waterways. There are so many variables at play, such as damage to the environment which is more delicate at some sites than others. I also do not agree that "just anyone" should be allowed to have access to the proposed areas by right for many reasons which have also been voiced by others, eg likely increase in rural crime; invasion of privacy; littering and fouling of the environment; damage of our native species' habitats; etc.

A few submitters, in expressing their disagreement with the principles, consider the whole consultation document is biased towards recreational interests.

> [The document was] drafted by a biased Panel using the Resource Management Act as a threat to landowners – landowners have the right to manage who enters private land.

Other submitters are concerned about issues not covered by the principles:

- who will meet the costs of developing and maintaining access (including providing information)?
- what will the effects of access be on maintaining and operating water catchments and industrial areas?

General comments made by submitters include:

- public access is very precious, synonymous with the New Zealand lifestyle and must be protected;
- public access to rural areas is the quid pro quo for community subsidies of utilities and roading services;
- access requires a collaborative approach – central government directives may be insufficient;
- access should be practical and need not be by the shortest or easiest route;
- environmental values need to be considered;
- public safety needs to be considered.

3.3 Individual principles

Many submitters comment on the five principles individually, and on the separate components of the principle of quality of access (that is, that access should be free, certain and enduring).

3.3.1 Quality of access

Of the submitters who comment specifically on the principle of quality of access as a whole, most agree with the principle. Many of these submitters have recreational interests.

> I support this document's essential aim and principles – especially that access should be free, certain and enduring.

Several submitters agree with the principle on condition that it also covers public land, and one submitter agrees if the public right of access to public land via private land where necessary is included.

Few submitters disagree entirely with the principle. Those who do consider it takes no account of changes over time and is too limiting. Another submitter who does not agree thinks situations need to be dealt with case by case and that the principle of quality of access will not always be applicable.

> The report makes no reference to the inability of those negotiating for public access on a voluntary basis to guarantee private landowners "certain" and "enduring" agreements. Increasing population density, the mobility of that

> population, and changing recreational interests are a few examples of the ways in which a voluntarily agreed access may be considered inappropriate by the landowner over time.

Free

Free – that is, the public should be able to access for recreational purposes without charge those areas that are designated as being open to access.

Of those submitters who comment specifically on access being free of charge, under half agree with the principle. Note, however, that many submitters agree with the principle because they agree with the principle of quality of access generally or with all of the principles proposed.

Those submitters who agree specifically with the principle of "free of charge" include many submitters with recreational interests commenting on "exclusive capture".

> Access to all waterbodies and public land must be free of charge. There is effectively already exclusive capture of waterbodies and public land in some areas of New Zealand (landholders locking out access to public land or waterways and selling this access to guides or using it exclusively for themselves). This is not satisfactory and the stopping of this practice needs to be one of the key recommendations of the Panel's report. This was a major issue recognised in the Access Group's 2003 report, but has not been addressed during this round of consultations – why is this?

Some submitters who agree that access should be free note that access to DOC lands is not always free, and that public lands should be included. Others who agree want the principle extended to cover all forms of access, while some submitters consider that there could be charges for vehicle access.

Some submitters who agree think a closer definition of terms is required. Several submitters suggest that the principle should include the words "non-commercial recreation". A local authority submitter is concerned that the term "designated" may be interpreted as per the Resource Management Act 1991 (and thus may lapse if not given effect) and wants the word changed to "dedicated".

A few submitters want it made clear that access will also be free of cost to the landholder also, and have concerns that landholders will face costs in relation to negotiation, legal fees and fencing. A number of submitters who agree with the principle that users should not directly pay for access think the principle should acknowledge that access does have a cost, met by taxes and rates. It is pointed out that there will be costs in preparing information and infrastructure and in developing and maintaining access. Some submitters suggest that overseas tourists should be charged for access but not New Zealanders (who pay through taxes and rates).

A few submitters comment that a fee for access may help users appreciate the resource, and could be a means of conserving environmental values.

> A cost recovery charge is a positive factor as proactive management of a resource contributes to the appreciation of the resource. Our investment in better facilities and cultural, environmental and social outcomes requires legal certainty. We currently manage our resource carefully as unlimited access damages and degrades an environment.

Other submitters note that the costs of access will vary in different situations and a fee may be appropriate in some circumstances.

Some submitters disagree that access should be free of charge. Submitters point out that DOC charges for access in some cases, and rural landholders should also be able to. A few submitters feel that charges are permissible where access is an economic asset of the property that the landholder has had to pay for.

> Landowners, particularly rural landowners adjacent to significant waterways and the coastline, may be able to generate supplementary income from charging for access across their lands. That opportunity is lost (forever) when the principle of free public access is promoted or when the Government acquires that land for public access.

Certain

Certain – both the public and landholders expect legal certainty over the ability of the public to access water margin land, and the right of landholders to exclude the public from privately owned land.

Relatively few submitters comment specifically on the principle of access being certain. Note, however, that many submitters agree with the principle because they agree with the principle of quality of access generally or with all of the principles proposed.

A number of those agreeing with the principle specifically want "and other public land" added to it. Some of the submitters feel the access should be certain, provided that users adhere to their obligations (such as might be defined in a code of conduct). A few submitters consider that, where there is certainty of access, there is no need to ask permission – unless extraordinary circumstances prevail, such as disease outbreak or extreme fire risk.

Other submitters, while agreeing that certainty is preferable for all parties, note that it cannot be achieved.

> Maybe if people's attitudes and conduct were absolute and nature constant – these terms are only philosophical.

A number of submitters with landholding interests agree, provided that the "certain" access arrangements are fair to all parties.

> Landowners and the recreational public benefit from legal certainty of access, but certainty must reflect fairness of legislative requirements on landowners against the rights it confers on the general public. Landowners who presently legally own riparian margins definitely expect legal certainty of ownership and exclusivity (if that is what they wish) unless this land is purchased fairly by Government or access negotiated with compensation if required.

Several submitters with landholding interests want to retain the right to restrict or deny access in a range of circumstances, for example, poor behaviour of users, seasonal requirements such as lambing, or a change in land use.

> Public access to areas of currently forested land cannot be assured where forestry is discontinued. Alternative land uses may be incompatible with recreational access but such changes can be necessitated where returns from forestry investment are perceived to be less than alternative land uses.

Enduring

Enduring – the legal right of access should be enduring over time. As well as responding to the current access concerns expressed by the public, access remedies should take account of potential problems resulting from changing patterns of land ownership and owner attitudes, and the impact of these on future generations.

Relatively few submitters comment specifically on the principle of access being enduring. Note, however, that many submitters agree to the principle because they agree with the principle of quality of access generally or with all of the principles proposed.

Some submitters reiterate that enduring access is important. Others who agree with the principle feel that some qualification is necessary. One suggestion is that "as far as practicable" should be added. Others similarly suggest that some mechanism is required to alter an access arrangement, if, for example, the reason for granting access should not remain.

> Access should be enduring as long as the reason for granting that access remains, and is not lost due to whatever, ie if access is granted to a small beach but over time, erosion causes the beach to disappear into the sea or under a mudslide, etc.

Many of the submitters who comment specifically on the "enduring" principle comment on the need for flexibility.

> The longevity of any access arrangement will need to be measured against the landowner's imperative to manage land use against market demand. Some element of flexibility must enter into the principles underpinning public access across private land.

Some submitters disagree that access should be enduring, as it reduces landholders' ability to manage their land.

> [We] do not agree – cannot guarantee access to be enduring; it would reduce the ability to convert lands and would hinder economic development.

One landholder submits that some access opportunities will be lost if arrangements must endure.

A few submitters suggest that access arrangements should endure to the extent negotiated with an owner. Others particularly want to avoid having to renegotiate arrangements with each change of ownership. Some suggest that access arrangements are registered on land titles – and also suggest that, if this happens, an asset is lost and compensation is required.

A few submitters feel that other aspects of access arrangements need to be resolved before there can be any discussion of how long an arrangement endures. One submitter considers that the type of access needs to be finalised prior to it being enduring. Another submitter questions whether the necessary surveying data will ever be gathered.

> Any legislation must be cognisant of the unenduring nature of the landscape such as shifting river boundaries. Unless the Walkways Commission is re-established and a significant fund is made available to address surveying issues then it is unlikely that access to river margins can be enduring.

Another suggestion is that:

> Enduring legal public access needs to be established to and along waterways over time. A number of complementary methods could be used, including continuing to create esplanade reserves and strips on subdivision and using designations in district plans, but an important focus should be on negotiation in good faith with affected landowners.

3.3.2 Respect for property and the environment

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

Again, few submitters comment specifically on the principle of respect for property and the environment. Note, however, that many submitters agree to the principle because they agree generally with all of the principles proposed.

About half of the submitters commenting specifically on the principle of respect agree it is important, but many of these submitters want to add to the principle. A number of submitters want the principle to read "… not interfere with private **or public** property or activities" (emphasis shows the submitter's desired changes). A few submitters want to include culture, heritage and biosecurity in taking proper care of the environment.

Some submitters who agree with the principle want to emphasise that private landholders should equally respect public rights of access to waterways and the coast, and that private landholders adjacent to public land should not interfere with that public land.

> There is … no doubt that persons enjoying a right of access should respect private property and the environment. Equally, however, it is important to balance this by noting that private landowners should not unreasonably interfere with the rights of the public to access rivers lakes and the coastline. This is an important principle if we are to reach a "fair and reasonable" conclusion for all parties.

One submitter notes there is no absolute right to go on public land, and many note there is no right of access on private land and request that the words "a right of" be deleted from the principle.

Many submitters note that the principle does not recognise the work and interference required to accommodate the public accessing private land.

Other submitters feel that the principle needs to be more strongly worded, specifically that people accessing land "must" rather than "should" take proper care. Others feel that "proper care" and "interference" are too vague and will thus lead to difficulties. A few submitters point out that some people accessing land now do not take proper care and want to know what will be different when and if access arrangements change.

> People should take proper care of the environment and not interfere with the property or the activities but that is not happening now with limited access so how will it differ except there will be more people to deal with.

A few submitters want the principle to incorporate the right to withdraw access or apply other sanctions, if there are continuing problems with lack of respect.

Some submitters point out that considerable education of the public is required, and question whose job this will be – they do not want this to fall to landholders.

3.3.3 Information and maps

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

Few submitters comment specifically on the principle of people being able to access information, including maps. Note, however, that many submitters agree to the principle because they agree generally with all of the principles proposed. Note also that there is more extensive discussion of providing information in section 4.

About half of the submitters commenting specifically on the principle agree with it. Some of these submitters want to add to the principle. These additions include being able to access information about "land that is open … and **access thereto**" and providing information about "land **and foot tracks**". A number of submitters feel that this

information needs to be supported by signage on the ground, and that this needs to be incorporated in the principle.

Submitters are concerned about the accuracy and consistency of the information. Some submitters commenting specifically on the principle note that it does not provide for the necessary and extensive task of checking the accuracy of information.

> This does not provide for reconciliation or checks against the accuracy of mapping information before it is published.

Some of these submitters state there is no recourse to have errors fixed, and that landholder approval should be required before any information is published.

A local authority submitter also comments on the accuracy of information.

> With respect to Principle 3, many local authorities throughout NZ have developed geographical information systems (GIS) and are making aerial photography and cadastral boundary information available to property owners and the public. While the information is "useful and easy to obtain", it needs to be clearly pointed out to users that there will be limitations in the accuracy of the information particularly with respect to the location of boundaries. That is where there is a potential for disputes, the parties to the dispute may still need to get boundaries more accurately defined by ground survey by a registered surveyor. To give an example of this, it is noted that the Government is considering an All of Government purchase of high resolution imagery for NZ. The proposed geospatial accuracy is 2.6 metres.

A few submitters point out that a thorough review is required of unformed legal roads and that the principle should read "… **and, where deemed appropriate**, unformed legal roads".

3.3.4 Reinstating lost access

Restoring reservations to water margins should be pursued, provided that it can be done in a way that is fair to all parties.

Submitters commenting specifically on the principle of lost access are relatively evenly divided. Note, however, that many submitters agree to the principle because they agree generally with all of the principles proposed.

About a third of submitters commenting specifically on the principle agree with it. Some feel it is a priority to address, and should be "achieved" rather than merely "pursued". A few submitters point to the need to correct the legal mechanism(s) that enabled the access to be initially created then lost. Another asks that any mechanism created to allow reinstatement also be available to landholders.

> Reinstating "lost access" comes up against some of the same procedural issues faced by rural landowners wishing to shift or close unformed roads. Any new

> system of addressing alteration of legal access for access reasons must also be as available to rural landowners to shift roads and other accessways to suit their operational requirements while not reducing the access.

Legislation to compel reinstatement is mentioned by a few submitters, some of whom note compensation should be paid where there is a loss to the landholder, and any liability removed. A few submitters feel that, if there is failure to restore access, this should not preclude trying again later.

A number of submitters from a range of interest groups agree with the principle if reinstatement is achieved only through negotiation and agreement with landholders, or if it is entirely voluntary by the landholder. Lease or purchase arrangements are mentioned by several of these submitters. However, several submitters ask who will pay for the surveying and other costs involved in negotiating to reinstate lost access.

Some submitters state that the principle of reinstating lost access does not recognise there are many waterways along which reserves would not have access value, and one submitter considers that need should be proved. However, another notes that, although there may appear to be little value to restoring some lost access, future needs are hard to predict. A few submitters agree with the principle on a case-by-case basis. Others question whether reinstatement is necessary where other accessways are well maintained.

> The reinstatement of lost access and creation of new access appears unnecessary. [Our] forest estate has a well maintained roading infrastructure, accessways are kept weed free and clear of debris, and members of the public, once an access permit is obtained, have the ability to use [our] roading infrastructure to access public areas – therefore why create new access?

Some submitters want to add various points to the principle. A number of submitters ask that access be "… to **and along** water margins **and public land**". Others request that a phrase about compensation to landholders "if land or property rights are acquired from them" be included in the principle.

A few submitters feel that loss through erosion must be accepted, and some point out that private landowners must take such losses, and the public should have to similarly.

Submitters also state the principle does not recognise competing interests, and is in conflict with the environmental concern that the banks of waterways should be planted. Some point out that restoring margins will give rise to them becoming overgrown and that the public will then walk in farmers' paddocks. Another submitter notes that farmers will have the expense of providing alternative access to water for their stock.

A few submitters feel the principle presents a conflict between property rights and public access.

> It is not possible to have legal certainty for the public to have access to water margin land and the landholders to have legal rights to exclude the public from privately owned land. There is either legal right of access or there is not.

3.3.5 New access

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

On the whole, many submitters agree with the principle because they agree generally with all of the principles proposed. However, most of the submitters commenting specifically on the principle of new access are opposed to the use of the word "preferably" and want new access to be established only through negotiation and agreement.

> "Preferably by negotiation and agreement": suggests reliance on heavier-handed acquisition mechanisms to secure new access arrangements. This would not align with respecting the interests of private landowners. New access arrangements should only ever occur with the agreement of affected private landowners.

Various means of compensating landholders are suggested, such as monetary compensation, renting the accessway, rates relief, annual payments, maintaining the land and exchanging it for land elsewhere. It is also considered important that landholders agreeing to form new accessways are not responsible for facilities or track maintenance. Further, if land is purchased to create new access, it should be only on a willing buyer/willing seller basis. Submitters' views on methods of negotiating access are discussed in greater detail in section 12.

Other submitters feel negotiation is preferable but that, if a landholder refuses to negotiate, there must be some legislative means available.

> New access along and to water margins and other public land has to be established. We recognise that negotiation and agreement between parties is by far the best method of securing workable solutions in most cases. However there are increasing instances where one party may refuse to negotiate and thus it is essential that in these cases legislation exists to enable access to be obtained.

Some submitters feel that, if land is required for new access, then it should be purchased under the Public Works Act 1981. Other submitters suggest that legislation is required to trigger access rights when land is sold or subdivided, particularly if sold to overseas buyers or if public land is being sold.

Conversely, some landholders feel that their property rights require further protection.

> Legislation should be formulated which will protect the rights of rural landowners/farmers for the future. The Government should be required to investigate and put into place appropriate structures and procedures. These

> procedures should include provision and consideration of all costs involved in creating new access, decisions on who bears the costs involved, including future maintenance, who makes the decisions re new access ways, and the absolute need for the rural landowner/farmer to be involved and included at all stages of negotiation.

Some submitters consider that, if negotiation fails, there is simply no access available, although this does not preclude trying to negotiate access at a later date. It is also considered important to prioritise access requirements. One suggestion is that priority be given to landscapes considered significant under the Resource Management Act 1991. Having a mechanism to prioritise areas where new access is required is considered important by several submitters. However, a few submitters feel new access is not a priority at all until existing public access is identified and enhanced, where required. Others point out that the cost of obtaining access to absolutely all waterways, coast and public land would be prohibitive, as some of these areas have very little recreational value.

Some landholders consider that sufficient access exists and is available by asking. Submitters are also concerned that mechanisms to acquire new access should not override existing successful arrangements.

4 Information about existing access

Background (from the 2003 Reference Group report and from public meetings)
There is currently no readily accessible, complete and authoritative source of information on the location of water margin reserves or public accessways to water margins. Maps showing the location of existing public access could be produced and made available. Signposting could also be used to show existing access.

Questions asked of submitters: What information should be included in any mapping database? Should the maps be web-based or should printed copies be available? Is signposting necessary? What matters are relevant to making information about access rights useful?

4.1 Key points made in submissions

- Most submitters want a mapping database to show all public land and public access to it in sufficient detail so that they can be confident they are on the correct route.
- Some submitters want details about all land to be available.
- Many (but not all) submitters want unformed legal roads identified on maps.
- Some submitters suggest providing extensive detail about the access route.
- A number of submitters (mainly recreationists) want to see landholders' contact details in the database, although others (mainly landholders) think this would be a security risk to landholders.
- Several submitters suggest certain restrictions on access information.
- Some submitters express concerns about the accuracy of the information in a mapping database and the costs of providing and maintaining the information.
- Most submitters feel that both paper and internet sources are necessary, primarily because of the need for high-quality paper maps in the field, and also because some groups have internet access issues.
- Many submitters suggest a map scale of 1:50,000. It is, however, widely felt there would be variations to this scale depending on the locality and whether there was also on-ground signposting. Overall, submitters feel that the most important element is comprehension – that people using the maps can clearly see the location of public accessways.

- Many submitters would like access information to be widely available at low cost.

4.2 Show public land and public access to it

Most submitters want a mapping database to show public land and public access to it in sufficient detail so that they can be confident they are on the correct route.

> [Show] all information on routes, starting points, and clear delineation of public land and publicly accessible private land.

Providing graphical detail is considered important by many submitters, to help people identify where access points and routes are. These submitters want to see topographical features (river beds, lake edges, land contour, mountain summits) and roads noted. A number of submitters suggest using topographical maps.

> Topographical detail to enable the land to be identified on the ground, eg river beds, lake edges, fence lines, land contour. Legal boundaries including road line boundaries, private property boundaries, public access strip boundaries, Crown land boundaries.

A number of submitters would also like global positioning system (GPS) co-ordinates provided. These submitters feel that this would give the required accuracy and that the technology is now widely available.

> The database [should include] a GPS compatible file for every paper road, reserve, marginal strip, and easement – available for download and referenced on maps with contact details for [landholders].

Overall, the following quote sums up an "average" view of most submitters.

> The purpose of an access database is to enable people to use public areas in the outdoors. Unless there is a universal access right alongside all water it is necessary to maintain a database of all relevant information and make this freely and easily available to the public … The database should enable members of the public to easily determine where they are able to go legally such as the tenure of the land. It should clearly mark reserves or accessways. It could also include information concerning negotiated access across private land and set out factors that needed to be considered when using that land such as fire conditions, lambing etc. The information will be easiest to understand if it is graphically based. Ideally it should include an aerial overlay, as this will make it easier to match the access way with the actual situation in the field. Clarity and certainty are absolutely essential, as is ease of interpretation. Complex information and a complicated database will in itself become a barrier to access.

4.3 Provide details about all land

Some submitters want details about all land to be available in a mapping database, that is, the legal status and title of all land, and landholders' contact details. One submitter suggests that the Land Information New Zealand (LINZ) database be made publicly available

free of charge. Another suggestion is to have information on cadastral maps overlaid onto topographical maps.

> A mapping database should show properties, legal roads and marginal strips and access provisions, contact numbers of landowners, list of temporary closures of access over private land, access maps overlaying topographic maps and aerial photographs.

4.4 Identify unformed legal roads

Many submitters want unformed legal roads (paper roads) identified and also ask that maps show where roads (formed or unformed) become private.

> Paper roads need to be part of the information – a published list of what is available regionally so landowners are not harassed and the public know where their access is.

However, some submitters have reservations about the identification of unformed legal roads on maps: a few submitters suggest variously that identifying unformed legal roads and farm tracks causes problems, that only walkable unformed legal roads should be identified, or that they should only be identified with the approval of the local authority, due to safety and cost concerns.

> On Banks Peninsula, there are many unformed legal roads that run across land that is simply NOT suitable for pedestrian access – down cliffs etc – and it would be dangerous to mark these paper roads as walking tracks. (emphasis in the original)

4.5 Provide extensive detail about the access route

Some submitters suggest providing extensive detail about the access route, including the length of the route, the physical difficulty, mode of access (for example, walking, mountain bikes), seasonal and other restrictions (for example, to protect areas of environmental sensitivity), hours of access, landholders' requirements, emergency contact numbers, and type of gear required for walkers. It is also suggested that the mapping database includes links to a code of conduct.

4.6 Provide landholders' contact details

A number of submitters (mainly recreationists) want to see landholders' contact details; however, some (mainly landholders) think this would be a security risk to landholders and should be done only with the landholder's permission or if an intermediary contact centre took calls asking for permission to cross private land.

> Where a landowner does not wish to have their details published then perhaps an intermediary such as a call centre could either take a message, connect you through to the landowner or even be able to give permission if required.

4.7 Restrict access information

Some submitters suggest certain restrictions on access information, including access information being given only to certain recreational groups, the landowner concerned deciding what information is published, and only established and/or safe routes being marked.

> No. Invites spur of the moment access. Access information on maps should be only on those maps for use among certain recreation groups, not general road maps.

A number of these submitters are landholders requesting that private roads and farm tracks be excluded from any database.

4.8 Concerns about the accuracy and cost of the information

Some submitters express concerns about the accuracy of the information available now.

> Inadequate field checking and an over reliance on aerial photography, perhaps for several decades, has caused the tracks record of the New Zealand Topographic Database (NZTopo) to become inaccurate, incomplete and out of date.

A local authority suggests that caveats be placed on maps regarding the accuracy of cadastral information. Another suggestion is that existing sources of information (for example, local authorities, Quotable Value Limited and LINZ) be linked to ensure cost-effective and updated information. Other submitters suggest adding the date of the last revision of any information to the database.

Some submitters are also concerned about the cost of providing this information. Many submitters think that there should be no or only a minimal (direct) cost to the public. However, one submitter notes a commercial conflict, as LINZ currently sells an electronic map database. Other submitters feel that the costs of developing the database should be met by recreational users. One submitter specifically queries whether such a mapping database would include a comprehensive (and costly) title search to ensure information is available on esplanade strips from subdivision.

4.9 Balance paper maps and dependence on internet access

Few submitters specify a ratio of paper to internet maps. Web-based maps are considered cheap, easily updated and widely available. A few submitters note that the distinction between web-based and paper maps is becoming meaningless as maps can be printed as required from web-based systems. However, concerns remain with the quality of maps printed from home computers.

> Internet access is useful for planning a tramp, but it is necessary to have a paper map when tramping. Printed maps are still necessary. Most individuals do not have access to a colour printer of sufficient quality to print a clear map for field use. In addition it is difficult with many map databases to produce a print exactly at a 1:50,000 scale. Compasses in common usage incorporate a centimetre scale to measure distances on a map but this cannot be used if the map is not a 1:50,000 scale.

Most submitters therefore feel that both paper and internet sources are necessary, primarily because of the need for high-quality paper maps in the field, and also because there are still internet access problems for some groups (for example, people living in some rural areas, Māori, tourists, older people).

> In the last census only 29 percent of … Māori people lived in households with internet access. Any mapping strategy must similarly recognise this limitation and provide low cost solutions.

Submitters acknowledge that certain groups do not have access to the internet at home but it is generally considered that people can relatively easily get access at libraries, or get information printed at places such as DOC offices and information centres. Many submitters feel that, eventually, internet access only will be sufficient.

A number of submitters note that web-based maps should be free or low cost, and that paper maps be of low cost.

> I think that all New Zealanders should have access to low cost electronic maps of our country, as we depend more and more on the electronic systems. I was forced to pay $300.00 for a full set of 1:50,000 maps from a commercial enterprise, which was basically only a copy of four CDs which would only have only cost about four dollars. I was unable to get these directly from Land Information New Zealand. Considering that my taxes pay for the government-mapping program I should not have to pay so much for maps of a country in which I am a shareholder.

4.9.1 Concerns

Some submitters express concerns about people having obsolete maps. Submitters consider that outdated information will not only cause difficulties for recreational users with landholders but may also be dangerous.

> It goes without saying that all information should be kept up to date. It is still possible to purchase maps from the NZMS 260 series reprinted in 2000 that show the presence of forestry huts on public land that were removed nearly 20 years ago. This is not only misleading but dangerous.

One submitter notes that many people cannot read maps and may need help to learn, and many will need signs and markers on the ground in addition to maps, and possibly guidebooks.

Many submitters comment on the importance – and difficulty – of having accurate information.

> Information and signposting is crucial and particularly to create in the public mind, the sense that access across private land is very specific and not general. We think you grossly underestimate the magnitude of the task of providing up-to-date mapping and problems of establishing and maintaining signage and other essential infrastructure.

Some submitters request that permission be obtained from landholders before maps showing access over private property are made publicly available.

A few submitters consider that maps generated from a website are open to abuse.

> Full mapping service over net not advised as images can be modified by users/abusers; paper only.

Overall, submitters feel that the most important element is clarity – that people using the maps can clearly see where public accessways are – preferably without having to use reading glasses.

> Sufficient to allow people with little experience to clearly establish location in reference to adjoining private land.

4.10 Use standard map scale

Of those submitters who suggest a scale, the most common is 1:50,000, that is, the scale used in the NZ260 topographic map series. However, suggestions range from 1:500 to 1:250,000. Many submitters think the scale will need to differ for various localities. Some submitters point out that the scale will also depend on whether there is signposting to orient people. A number of submitters suggest having public roads and marginal strips overlaid onto topographic maps, or combining topographic, cadastral and public access information onto one map.

> In many rural areas overlay of public roads and marginal strips on a 1:50,000 topographic map would be adequate, provided that the start of the access is signposted where it is not obvious. Why not start having unformed public roads and marginal strips included on the normal topo maps? In cases where adjoining landowners are unhappy about public access, this scale does not permit definite location of the road and would leave the user open to claims of trespass. You would initially need larger scale maps and aerial photos in these areas, until the route is signposted and marked with poles. In urban and semi-urban areas, there need to be maps at a large enough scale to identify individual sections, and aerial photos so you can see eg where a walking access has been fenced over, or which side of the fence an unformed road goes.

A number of submitters feel that the question is irrelevant, as users can determine the scale they want using digital maps.

4.11 Other matters relating to information about access rights

Matters additional to those noted above relate largely to the distribution of information. Many submitters want to see information (for example, maps, user responsibilities, contact details for landholders, information about restrictions on access, hazards, definitions of terms) made available as widely as possible. Submitters particularly note that it should be available locally through, for example, libraries, DOC offices, information centres, local authorities, and multiple agency websites (for example, DOC, LINZ, local authorities) and the websites of recreational clubs, such as Federated Mountain Clubs and Fish & Game. Another suggestion was that local outlets could have simple pamphlets stating where people can get detailed information. One submitter noted that outdoor recreation was meant to be an adventure and that maps should be sufficient.

A few submitters note that the responsibility for collecting this information should be with one agency. The importance of on-site checking for accuracy was raised by some submitters, and one person wanted a mechanism for local people to provide information to the agency responsible.

5 Signposting

Background (from the 2003 Reference Group report and from public meetings)
Signposting may be a means of providing the public with more information about rights of access to land. Signposting could, for example, indicate the existence of public access where rivers intersect with formed public roads. Issues that need to be considered are the extent of such signposting and who should bear the costs of erecting and maintaining the signs.

Questions asked of submitters: Is signposting necessary at all? How extensive should signposting be? Who should be responsible for signposting? Who should bear the cost of signposting?

5.1 Key points made in submissions

- The majority of submitters (across all interest groups) agree that signposting – to varying degrees – is required.
- It is generally considered more appropriate to signpost where people are allowed, although signage may not be required everywhere there is public access.
- Those submitters who favour (a degree of) signposting prefer standardised signage with minimal visual impact, to be used at the beginning of accessways.
- Many submitters consider that a central agency (either new or existing) should fund signposting and take responsibility for ensuring signage is uniform, although signs could be installed and maintained locally by local authorities, and possibly user groups.
- Other submitters think that signposting (funding and installation) should be the responsibility of whoever has authority over the land in question.

5.2 Is signposting necessary?

The majority of submitters (across all interest groups) agree that signposting – to varying degrees – is required. One of the most common reasons for this view is that signposting reduces confusion and conflict for all parties concerned. On the whole, many submitters see signs as an integral aspect of usable public access.

> Signposting is vital – this is the key to practical and usable public access. Most marginal strips and unformed roads are used as farmland by the adjacent landowner, and even when you know it is public, it feels wrong to climb over a locked gate or squeeze through a fence and stride past a flock of sheep. But if there is a signpost, you can use the access with confidence. Signs also help the public locate and identify access in areas they are unfamiliar with.

Although submitters note that access information will presumably be available elsewhere (for example, database, maps), people may not have this information with them or may not be able to read maps, or maps may not be entirely clear.

> Maps are open to interpretation in spite of the availability of GPS technologies. Signs are the only reasonable means of ensuring users know where they can go.

Signs are considered particularly helpful for tourists.

Signs can be customised to their location and encourage appropriate behaviour, for example, in environmentally sensitive areas. Some submitters feel that signs also prevent encroachment on public land.

> [We] would like to have clear demarcation of walkways to prevent encroachments. In some situations, especially around the coast, this would entail Department of Conservation or [the local authority putting] colour coded posts alongside reserve boundary survey markers with a wire or rope strung between. This is necessary because of the number of encroachments – plantings, fences, earthworks, a helicopter pad, rerouting of tracks by private landowners etc.

Some submitters think that signs will not be necessary if detailed maps and GPS co-ordinates are available. Several submitters note that signs would not be necessary if the Queen's Chain were complete.

> Signposting is not required if access is universally available alongside rivers, lakes and the coastline. If the current mix of public and private control of access alongside water continues it will be necessary to signpost public access to provide certainty and avoid confusion. The extent of the signposting will be determined by the complexity of land tenure.

A small number of submitters (from various interest groups) disagree that signs are necessary. These submitters are concerned (variously) about the costs of development and maintenance, vandalism, the unsightliness of signs, and encouraging "hoons" to access areas. A few submitters consider that people with a genuine recreational intent will consult a map. Some submitters feel that the current system has operated successfully for the past 150 years and there is no need to change it. Others consider that it is unnecessary to think about whether or not to have signage before resolving basic access principles.

5.3 How extensive should signposting be?

Of those submitters who think there should be some signposting, many think it is more appropriate to signpost places where people are allowed. These submitters consider that it would be very expensive to signpost where people were not allowed. Also, they do not want an overabundance of signs in rural areas, and consider it would appear unfriendly, particularly to tourists, to signpost where people are not allowed. It is pointed out that signposting where people are not allowed is covered by the Trespass Act 1980, that is, it is currently up to

landholders to sign where people are not allowed and should remain so – although several submitters with landholding interests question why they should incur the costs of signage (assuming there is an increase in access seekers). However, some submitters acknowledge there may be circumstances in which signs will be needed where people are not allowed.

A number of submitters note that signage will not be required everywhere that access is allowed. However, it is pointed out that not having signage should not prejudice public access. Generally, submitters agreeing there should be signage think it should be at entry points, with route markers used if any confusion is likely.

> This depends on the nature of the accessway. If it is a general access available along an extensive length of easily accessible river the number of signposts could be minimised. As the access becomes more complicated it will be necessary to provide more specific direction via signposts, tracks or detailed signs. This will need to occur on a case-by-case basis.

Some of the cases where signs will be required are in areas of high use and where there are obstructions, hazards or special conditions. Overall, submitters agreeing with (some) signposting consider it is required wherever necessary to assist route finding.

> [Signposting needs to be] extensive enough to allow people with little experience to clearly establish their location in reference to adjoining private land.

A number of submitters specifically discuss the signposting of unformed legal roads. Although one submitter specifically states that such roads should not be signposted, many others point out that it is a legal requirement to signpost these as legal accessways where they are blocked by gates or other obstructions. Landholders' responsibilities in relation to this requirement are emphasised.

> Consider whether a failure of a landholder to remove or correct a deceiving notice, with no reasonable excuse and after a warning, should land that landholder in court.

Many submitters comment on the appearance of signs, with most wanting to limit the visual impact of signposting and to use a simple, standardised approach. The walkway signs used in the United Kingdom, Fish & Game signs, DOC track marking and the "W" symbol of New Zealand Walkways are mentioned as examples to follow. It is suggested that way marking where necessary can be done by using immovable paint or reflectors on rocks. One submitter suggests using botanical signposting.

> Consider botanical signposting. For example, trees such as poplar and willow can grow from stakes in the ground and these can act as markers to keep people on track. The presence of markers is noted on the database.

A local authority submitter notes that district plan sign rules will take precedence but any guidelines adopted can be taken into account when the plan is reviewed.

In relation to the information on signs, submitters variously suggest including destinations, distances, maps and boundaries, fitness requirements, landholder contact details if there are any (potential) restrictions, and information about liability for damage to property or personal injury. It is further suggested that signs be placed to minimise vandalism.

5.4 Who should be responsible for signposting?

Submitters were asked to comment separately on who should be responsible for signposting and who should bear the cost of it.

Many submitters consider that an access agency, some other central organisation or "whoever is deemed responsible for managing public access" should be responsible for signposting. Other submitters state that all land currently has someone with authority over it and the responsibility for signposting should be with these people, for example, DOC, Transit New Zealand and local authorities. A number of submitters think signposting should be the responsibility of either regional councils or local authorities (that is, district and city councils). Some submitters specify DOC or the Walkways Commission, while a few submitters expressly state that signposting should not be the responsibility of DOC due to concerns about impartiality and whether it would be of sufficient priority.

A small number of submitters explicitly state that landholders should not be responsible for any signposting, while others distinguish between signposting that is legally required (that is, on obstructed legal roads) and that which, for example, a landholder might opt to have. A number of submitters comment only in relation to signposting unformed legal roads.

> Farmers should be responsible for ensuring the signs and markings are maintained in good order and notifying the agency of required repairs and replacements. This is a very small price to pay for the economic advantage that they get from the land. Councils should monitor that farmers are complying with this and report back to the agency. Failure of the farmers to comply should result in the farmer being required to fence their road boundaries, thereby creating the incentive for the farmer to comply.

Submitters who are concerned that signposting be uniform (and concerned about funding) suggest that a central agency might have responsibility for designing and producing signs but that local authorities and/or recreational clubs might have responsibility for installing and maintaining them.

> Why not talk to the clubs who use the tracks/land? Perhaps they would be keen to help with labour? So maybe the Crown gets a uniform signpost made up and the clubs mount them?

Some submitters also consider that, where a recreational club or Fish & Game have negotiated particular access arrangements, they should retain responsibility for signposting.

> In the case of solely fishing access where access has been negotiated by a body such as Fish & Game, this access signage should be their responsibility.

Another suggestion is that people carrying out community service take on the installation and maintenance work.

Overall, many submitters think the responsibility for physically putting signs in place should be borne by a mix of agencies and groups, although some acknowledge this may be complicated to administer.

5.5 Who should bear the cost of signposting?

Submitters' responses to the question of who should bear the cost of signposting are similar to responses about who should have the responsibility for signposting. Many of the submitters think that the costs should be borne by the public, that is, taxpayers through a central access agency or through government agencies that already have responsibility for public land.

Some submitters also consider that government agencies with interests in tourism, sport, recreation and health should contribute. A few submitters have even broader views.

> As a healthy alternative to motorised transport the passive public access network should attract some Transit NZ funding.

A number of submitters think that whoever is responsible for the land should pay for signage on that land. This would include DOC, local authorities, Fish & Game and landholders who want signs. In particular, many submitters consider local authorities should meet the cost of signposting where it is their responsibility to do so under the Resource Management Act 1991. Other submitters think it is unreasonable to burden rural local authorities with additional costs, although some note that central government could subsidise such local authorities with small rating bases, as they do with roading costs.

While a number of submitters suggest that a mix of agencies and users pay for signage, others consider that, while this might be fair, it is too complex.

> The access agency should pay for the cost of signage. Trying to appropriate a portion of cost to trampers, anglers or other user groups is problematic and should be avoided to keep the process as simple as possible.

Some submitters differentiate between the initial costs of producing signage and the ongoing maintenance costs, apportioning these costs to a central agency and to local authorities, respectively.

A few submitters suggest that sponsorship might be gained for signposting certain areas.

> Look at feasibility of commercial sponsorship of tracks such as Mainland Cheese sponsoring yellow eyed penguins … develop innovative solutions for funding.

Some submitters suggest users should pay where possible, for example, through licences and contributions from the tourism industry. A few suggest that those who think enhancing public access is a good idea should fund signs. Other submitters are emphatic that landholders should not pay, regardless of who else might.

6 Code of responsible conduct

Background (from the 2003 Reference Group report and from public meetings)
Both recreational users and landholders (farmers and industry stakeholders) considered that the majority of access users act responsibly but a small percentage of people abuse rights of access on private (and public) land, particularly those users not belonging to a recreational group. Many landholders feel that urban dwellers now lack knowledge of rural and farming practice. It is widely accepted that a code of responsible conduct would be useful for landholders and users.

Questions asked of submitters: Should a code of responsible conduct apply only to access over private land, or only to public land, or to both? Should a code of responsible conduct be legally enforceable (such as a regulatory or statutory code)? If so, what do you think are the main things that need to be included in such a code? Should a code of responsible conduct be non-regulatory, focusing on promoting good behaviour through education, clarifying existing laws and recommending best practice? If so, what do you think the code should include?

6.1 Key points made in submissions

- A majority of submitters agree there should be a code and that it should apply to both private and public land (although this does not necessarily mean the code would be the same for all land).
- Many submitters think a code should be regulatory or that existing laws in relation to the behaviour of users and landholders be enforced. Public education is also considered important.
- Broadly, most submitters think a code (whether regulatory or not) should cover the mode of access to land, activities on the land (particularly in relation to hunting), biosecurity, minimising impact on the natural environment, and appropriate behaviour on farms in relation to stock, property, fences, gates and landholders' privacy.

6.2 Code should apply to both private and public land

A majority of submitters agree there should be a code and that it should apply to both private and public land, or (alternatively expressed) to landholders and access users.

> A code of responsible conduct would clarify appropriate behaviour in respect of the access being exercised and reduce landholders' concerns about disturbance to stock and damage to property.

Note that some submitters clearly assume that having a code of conduct on private land paves the way for people being able to access private land at will. Other submitters assume the question is about

access on public land and unfenced, unformed legal roads that traverse private land or negotiated access over private land.

Some of the submitters who agree that a code should apply to all land feel that the code should be specific to various types of land, for example, forestry land, land with stock, public and private land, rural and wild land. Submitters also feel that having a code does not preclude particular instructions being issued by landholders (including public land managers) at various times, and cannot override landholders' autonomy.

> [We] strongly object to any form of code that interferes with the autonomy of Māori landowners or which encroaches upon their property or cultural rights or their ability to set their own management strategies upon their own land.

A few of the submitters who agree with the idea of a code nonetheless feel it will be a waste of time.

A number of submitters think that a code should apply to public land only, as landholders can advise people who ask permission for access on private land of any special conditions. Others think a code should apply to private land only, generally because this is where the submitters' concerns lie or because existing laws cover public land. However, some submitters state that, if there is no right of access on private land, then there is no need for a code of behaviour on private land.

Some submitters are concerned that having a code will not address changing health and safety issues and, for this reason, access should be by permission only – at which time, the landholder can make clear any required conduct and special conditions.

> [A code] WILL not address ever-changing health and safety issues within an operational plantation forest. We use access by permit system only. (emphasis in the original.)

Other submitters feel that there is no point to having a code of conduct at all. For some submitters, this is because there are existing laws to deal with people's behaviour on public and private land. For others, it is because a code will be "useless", that is, those most likely to offend will disregard it, it will offer landholders nothing when presented with a "huge fire bill" and there already is a code – namely a courteous request for access and the landholders' voluntary consent.

6.3 Code should be regulatory or existing laws should be enforced

In response to the questions asking whether a code of conduct should be regulatory or not, more submitters prefer that the code be regulatory. In addition, many of the submitters who think a code should not be regulatory state that this is because there are existing

laws to deal with most poor behaviour by both users and landholders. On the whole, many submitters from the range of interest groups would like to see enforcement of existing laws that address the behaviour of all parties in relation to access, or a code of conduct (or some parts of it) being regulatory and enforced. In particular, a number of submitters suggest that the Trespass Act be reviewed, as it is not easily prosecuted.

> The Trespass Act could be "strengthened" by changing to a "one strike and you are out" approach as well as to make provisions in the Act apply to private land that is subject to public access rights.

In addition, some submitters request heavier and/or more immediate penalties (for example, instant fines) for breaches of existing laws/a regulatory code. However, many submitters express doubt about any agency's ability to enforce regulations. They are also concerned about how landholders (or access users) can deal with breaches of the code in the absence of quickly available Police (widely noted as a fact of rural existence). Some submitters state that landholders should face no costs in enforcing regulations.

Some submitters are cautious about further regulation. Some would like to see a non-regulatory code tried first, and others are concerned that current rights might be diminished without any enhancement to public access.

> If the Panel decides [on a regulatory code], there could be no new legislation to improve the public's access rights and yet there might be a whole new list of statutory restrictions overlaid onto the present law of trespass and onto the public's already nonexistent legal rights to enjoy the farmed landscape.

Other reasons submitters give for wanting a code to be non-regulatory are:

- most people will respect a voluntary code and those most likely to behave in breach of it will not respect it, regardless of whether it is regulatory or not;
- a "code" being a regulatory instrument is a contradiction;
- there are an "excessive" number of laws already existing in New Zealand;
- "one size fits all" relating to access is impossible to legislate for;
- voluntary codes are perceived to work well now.

Irrespective of whether submitters want a code to be regulatory or not, many submitters feel there is a place for education about appropriate behaviour on the land. Also irrespective of whether a code is regulatory or not, submitters list similar subjects to be covered under any code, namely:

- legal rights and obligations of all parties;

- mode of access;
- behaviour around stock;
- use of gates, fences, stiles and footbridges;
- dogs;
- firearms, knives, traps and hunting in general;
- litter;
- biosecurity – cleaning boots, clothes and equipment; faeces;
- pollution of waterways, use of soap and detergent;
- damage to waterways – digging in riverbanks, removing sand;
- use of alcohol and drugs;
- fires and smoking;
- noise and disruptive behaviour;
- loitering, roaming at will;
- camping;
- landholders' privacy;
- flora and fauna;
- wāhi tapu and cultural and historic sites;
- damage to property;
- liability of users and landholders;
- accident and emergency response;
- notifying landholders of distressed stock and damage to property;
- reporting poor behaviour.

A few submitters also want the following areas covered in a code:

- informing the landholder of entry and exit from private property, signing a register;
- users ascertaining whether access exists prior to entering land;
- remedies for disputes;
- code enforcement process, penalties for breaches.

Some submitters list areas of landholder behaviour that should be in a code:

- advance notice to be provided when access temporarily denied;
- phone numbers of adjacent landholders;
- public rights regarding unformed legal roads.

As noted, many submitters support public education. However, some question whose responsibility this will be. Other submitters suggest that a code be promoted through schools (starting with early childhood education), through an access information database or through recreational clubs, DOC, local authorities and information centres. A number of submitters point out that several such codes already exist and could be adopted for general use.

7 Access agency

Background (from the 2003 Reference Group report and from public meetings)
Many people have commented on the lack of national leadership on access, and a perceived lack of interest among those agencies with existing responsibilities. It is widely considered that the principles for walking access will not be realised without focused leadership, particularly in the absence of access legislation, when options will depend on leadership, co-operation and persuasion.

Questions asked of submitters: What should be the purposes of an agency and what should be its main function? Taking into account your view of the purposes and functions of an agency, what organisational form should it take and why?

7.1 Key points made in submissions

- The majority of submitters (across all interest groups) support (or accept) the formation of an access agency.
- In general, many submitters want the proposed access agency to provide comprehensive management (policy and operations) of public access to public land, waterways and the coast, including negotiating access over private land, where necessary.
- Many submitters (drawn from all interest groups, including local authorities) want the agency to have some central functions but also to operate locally or through existing local agencies, such as local authorities.
- A small number of submitters (largely landholders, iwi groups, some local authorities and industry) do not support or are ambivalent about the formation of an access agency. Their concerns centre on the duplication of functions, the limited extent of access issues and threats to property rights.
- Submitters' views on the access agency's organisational form are widely spread. However, submitters supporting the formation of an access agency and identifying a form for this agency favour the model of a commissioner accountable to Parliament.
- Most submitters suggest that bureaucracy be minimal, that all interest groups be represented, that a regional presence be included and that the agency be politically independent.

7.2 The functions of an access agency

Submitters were not directly asked whether they supported the formation of an access agency; however, most submitters (across interest groups) describe their view of the purpose and/or functions of an agency, and are therefore assumed to support the creation of such an agency. A small number of submitters state that they do not support the formation of an access agency. These submitters are largely (among those who specified their interest) landholders, iwi groups, local government and industry.

Some submitters suggest that the agency should have only minimal functions, such as providing access information and contact numbers, or providing independent advice to policy makers. Other submitters make brief, general suggestions that the agency should manage access, or achieve the aims and principles set out in the consultation document.

Many submitters, however, comment extensively on the purpose and functions of the access agency. These functions may be summarised as providing comprehensive management (policy and operations) of public access to public land, waterways and the coast, including the negotiation of access over private land, where necessary. In more detail, the access agency should:

- research the current access situation, establish an access inventory, centralise data collected by other agencies and clarify access issues;
- provide information to other agencies and the public (develop a website, database and maps), promote access, deliver public education, make the rights and obligations of all parties clear, promote the traditional culture of mutual respect between landholders and access users, and educate people about issues relating to the Health and Safety in Employment Act 1992;
- liaise between interested parties, co-ordinate information and activities, and foster community involvement;
- fund (some submitters suggest contestably) local groups (including landholders and local authorities) for costs associated with public access, including legal costs and surveying costs;
- compensate landholders, where necessary, and insure landholders against public liability costs – a number of submitters think the agency needs an access enhancement fund for disbursal by the public access commissioner to cost-effectively improve public access; it is considered such a fund would benefit landowners, who have no mediator to turn to on access matters:

> Responsibilities at a regional level could be delegated to the Regional Council, or some other regional agency, who would receive specific government funding for implementation of policy, signposting etc

- have a statutory advocacy role in the tenure review process of Crown pastoral leases, advocate for access with the Overseas Investment Commission, protect landholders' rights, and promote legislation to enable the realignment of unformed legal roads and enable marginal strips to move with waterways;
- provide national leadership, develop policy and ensure national consistency;
- develop a toolkit for local authorities and review district plans;
- enhance access, identify areas of interest (many submitters with particular recreational interests want the access agency to commit to completing the Queen's Chain), prioritise access requirements, facilitate and negotiate access, mediate (provide a hotline for grievances) and resolve disputes, enforce access obligations and decisions made (some submitters think the agency should have binding powers of mediation and have judicial standing):

> The management of accessways would require legal expertise to negotiate new accessways and valuation expertise to determine appropriate compensation for new acquisitions. The acquisition of private land should never be treated lightly. This would necessarily mean a body with robust judicial standing akin to a land tribunal or similar

- regulate conduct of users and landholders, and develop codes of conduct;
- monitor other agencies with access responsibilities, lobby government to improve the LINZ database and the performance of other agencies with access responsibilities, report to Parliament and be accountable for enhancing public access;
- (either directly or by contracting out) build new accessways and standardise and maintain signposting, remove obstructions on unformed legal roads and collect fines and fees.

Some submitters feel that the agency should have the same functions as the former District Walkways Committees;[2] others agree that it should have the functions listed in Appendix 5 of the consultation document, with the authority and resources to carry these functions out. Submitters with particular recreational interests want the agency to be guided by the principle of how the public accesses public land, rather than if it can.

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[2] Walkways were first legislated for in 1975, and were originally under the jurisdiction of a central Walkways Commission supported by district Walkways Committees. In 1990, the Walkways Commission and its Committees were abolished, and their functions transferred to DOC and Conservation Boards.

7.2.1 Local or national

Many submitters are concerned that local concerns be heard.

> Facilitate the establishment of co-ordinating trusts to bring together representatives of the varied array of recreational users. Many users are not associated to any formal body and therefore are not represented. There is merit in local solutions but these need to be via some structure and organisation to which representative, robust, long-term, formal solutions to access can be implemented. There is also a willingness by many members of the community if directed and managed to assist with maintaining and enhancing access.

A number of submitters suggest that a central agency should develop an access strategy and policies but act through local agencies.

> [An agency would] require major infrastructure if it were able to operate effectively in the regions. A better solution would be to try and utilise the interest and knowledge in the regions by giving other organisations and agencies the opportunity to apply for funding to oversee activities that are consistent with the strategy developed by the agency.

Other submitters prefer that a central agency acts independently of local authorities and existing government agencies to maintain impetus.

7.2.2 Advocacy

Some submitters suggest that the agency should advocate for public access – for walking access users or for all users, including hunters. Other submitters suggest that the agency should advocate for landholders (or property rights) or to ensure environmental values are acknowledged. Some submitters observe a conflict in an agency that advocates for increased public access also mediating between users and landholders, and suggest the agency should promote understanding and co-operation between landholders and recreational access users.

> For all parties to have confidence in nonbinding mediation, the mediator will need to be conspicuously impartial. Some landowners might question the neutrality of an access agency charged with the job of promoting improvements in access. Furthermore, a mediating role could interfere with an access agency's primary task that of being a force for access ... I see the proposed access agency as an active and productive negotiator and funder of new access rights, complementing the progress that some local authorities and trusts are already making.

7.3 Submitters' concerns

Some submitters express ambivalence about the creation of a new agency. Their concerns centre on the lack of information required to inform such a decision, the rights of Māori under the Treaty of Waitangi, the duplication of functions and the expense of a new bureaucracy.

> The most important purpose of an access agency should be to ensure that the rights of Māori guaranteed under article two of the Treaty of Waitangi are protected in any access strategy going forward. Procedural and substantive protections must be guaranteed to ensure that the customary rights and interests of tangata whenua remain intact. We object to a centralised agency, at least where it is to be performing anything but a co-ordinating role. Access issues must be dealt with at a local level with locally negotiated solutions.

7.4 Opposition to the formation of an agency

Other submitters are opposed to the establishment of an agency. These submitters point to the current existence of agencies and legislation that can be used to respond to access issues. A few submitters also question the magnitude of problems with public access, and suggest that the creation of an agency is an extreme response.

> We are careful to not rule out the possibility that there might be the very occasional situation whereby obtaining access across private property may materially assist a measurably significant number of people to access a particularly attractive coast, lake or river. So be it. These situations may justify the attention of a state agency but we hardly think the number would justify the expense of a new, separate or specialist agency. We seem to be cracking a nut with a sledge hammer!

Other submitters who oppose the creation of an agency see it as a threat to property rights.

7.5 The form of the agency

Submitters' views on the organisational form of the proposed access agency are widely spread. However, submitters supporting the formation of an access agency and identifying a form for this agency favour the model of a commissioner accountable to Parliament. Submitters identifying as recreationists particularly support this option.

> I would respectfully urge the appointment of an independent Parliamentary Commissioner for Public Access. The appointee would be empowered to address maintenance, enforcement and enhancement of public access rights by other agencies. I believe it is essential for an independent Commissioner to be appointed because of the changes which have taken place since the late 1980s.

Some submitters support other options that were suggested in the consultation document. Local government submitters generally prefer the idea of a branded unit within an existing government department. Relatively few submitters identifying as landholders nominate an organisational form, but among those who do, a trust is the single most popular option. A number of recreationists support the idea of a Crown entity.

Note, though, that relatively large numbers of submitters from across all interest groups do not opt for a particular organisational form or

state only that any agency should be independent of party politics or particular interest groups. Many want an agency ombudsman to whom appeals could be made by any individual or group. Some submitters think that the various functions could be done by different agencies.

> Not all functions need be from one agency; could be an extension of the QEII Trust, mapping is an existing regional council role, other functions could be done by agency. Organisation needs to be independent, with power to dictate.

One submitter proposes an alternative approach, with two stages to the agency's organisational structure. It would have an early focus on maximising the efficacy of existing access rights, moving to the creation of new access rights, including prioritising expenditure, managing public funds and advising on property disputes.

> The functions of any access agency are likely to evolve… there is merit in considering setting up an agency initially as a branded and semi-autonomous entity within the Department of Conservation, reporting independently to the Minister, and then "floating" the agency as a statutory Trust on a statutory timetable three years later.

Many submitters provide reasons for their choice of organisational form. A branded unit with an existing government department was selected by submitters largely because it is considered to restrain costs. Some submitters choosing this option state that such a unit should fund local committees or operate with a separate commissioner. Others suggest that the functions of the proposed agency instead be given to each local authority. Suggestions for which government department such a unit might sit within were DOC, the Department of Internal Affairs, the Ministry of Health, the New Zealand Police, Sport & Recreation New Zealand and LINZ, and within Local Government New Zealand. A number of other submitters specifically consider that DOC should not be involved with the agency or, as suggested by a few submitters, should only have some representation in the agency.

A trust is considered by some submitters to be the most appropriate form for the agency because it was most likely to involve users and enthusiastic local volunteers, and it is also perceived to be less "politically loaded". Several submitters opting for a trust suggest that the most effective elements of the Queen Elizabeth II National Trust be emulated, that it should be monitored annually for progress, and that it may not be the complete solution to access issues.

Other submitters consider a Crown entity to also be a form that could achieve political independence. Again, local representation and involvement are considered important. Some submitters emphasise that it would need statutory powers, and that people must be able to make appeals to it.

A number of submitters opting for a commissioner accountable to Parliament suggest the office be similar to the Parliamentary Commissioner for the Environment but with greater powers. Some submitters wanting this form of agency note it needs a regional presence.

Other forms suggested for the agency are that of the former Walkways Commission, a land tribunal or an agency with a statutory charter that is part of a Ministerial portfolio.

> [We suggest] that an access agency should have a statutory charter and be part of a Ministerial portfolio to ensure Treaty partnership and compliance. Any such agency should be administered at a local level and develop working relationships with tangata whenua.

As noted above, some submitters do not want an access agency to be formed largely because there are existing agencies with public access responsibilities. Other submitters do not nominate an organisational form for the proposed agency but make general comments about the nature of the agency. These comments may be categorised as follows:

- form should follow function and it is too early to make decisions about the agency's form;
- the costs of a new agency are a concern, it should be tax-payer funded;
- the agency will need legal and valuation expertise, and negotiation skills;
- the agency must be able to enforce measures;
- the agency must respect landholders;
- the agency must have representatives from all interest groups, and must work at local level (will DOC and local authorities still have a role in public access?);
- the agency must be reviewed to ascertain if progress is being made.

8 Dispute resolution

Background (from the 2003 Reference Group report and from public meetings)
Many recreational submitters acknowledged that there are genuine reasons for access to be restricted at times. However, they also felt that sometimes landholders deny access unreasonably. Many felt that it is becoming harder to gain permission for access for various reasons, including the number of absentee owners and land use change. Whatever access arrangements are agreed to or promoted, there are still likely to be some disputes about exactly where access is permitted and about the behaviour of persons exercising access rights. There may then be merit in mediating disputes where there is uncertainty about rights or responsibilities.

Questions asked of submitters: How can disputes between landowners and recreational users be resolved? How can an intractable situation, where a landholder refuses to negotiate, be resolved?

8.1 Key points made in submissions

- Mediation, as an approach, is supported by many submitters across interest groups. However, submitters' opinions are divided about whether mediation should be voluntary or binding.
- A number of submitters support the use of the Trespass Act and other laws, and others want it to be used in combination with mediation. Submitters would like to see the Trespass Act reviewed to provide a workable statutory base for regulating access.
- A number of submitters consider that a mix of methods should be used for dispute resolution, depending on the circumstances.
- Many submitters consider that a landholder cannot be compelled to negotiate access over private land but that, if private land has particular value for public access, it can be purchased using the Public Works Act 1981. Some submitters think that legislative change is required to ensure access.
- It is generally held by submitters that access over public land (for example, unformed legal roads) can be addressed through existing legislation if it has been denied by a landholder.

8.2 Mediation

Mediation, as an approach, is supported by many submitters across interest groups. Some of these submitters consider involvement should be compulsory, others that it should be voluntary. Similarly, submitters' views differ as to whether mediation should be binding or supported by other legal means should it fail to resolve a dispute.

Many of the submitters supporting mediation suggest that it should be carried out by an access agency, while some specify the use of an access commissioner or an access ombudsman in a mediation role. A number of submitters hold the view that, if negotiation breaks down, there is a need to have an independent third party to resolve the disagreement and reach a binding agreement to avoid public land continuing to be "captured" by private owners.

Mediation carried out by other than an access agency (or an access commissioner or ombudsman) does not have wide support from submitters. A few suggest that DOC could have this role, although others are opposed to this. Some suggest that local government should be responsible for mediation because they know local issues and are accountable at election time. It is also suggested they need support in this role and very clear information and legal guidance. Others are specifically opposed to local government having a mediation role because they have not pursued their responsibilities in the past (government departments are included in this criticism), have no resources to do this and landholders should not have to pay for it (through rates). Another option put forward is that local committees mediate disputes.

> For each region, have a committee to oversee access in that region. The chairperson would be the manager in charge at the territorial local authority (or nominee). Draw the disputes tribunal from this. The committee make-up should have a representative from each sector. As long as there is no conflict of interest with each of these members, then might have to use a mediator, should be binding on both parties.

Opposing mediation, some submitters object to the principle of compulsory mediation and feel legal rights should be respected, while others consider mediation another time-consuming burden to landholders. Some submitters query who will pay the costs of the parties' involvement in mediation. Other submitters envisage scenarios where mediation might or might not be effective.

> Nonbinding mediation might resolve some disputes more amicably and less expensively than proceedings in court. It might particularly suit some disputes over the reinstating of access lost by erosion or accretion. These reinstatement cases may sometimes involve two landowners and the Crown. Some officers of the proposed access agency might be well equipped professionally to assume this role. But the mediator role could conflict with their main focus, which should be on improving access. Also, landowners might not view them as impartial. If the law of trespass remains unchanged, and if the Government introduces mediation to solve disputes, some landowners might decline to enter mediation, as they have the law on their side and may have nothing to gain from mediation.

8.3 Use of the Trespass Act 1980

The use of the Trespass Act to resolve disputes has support from some submitters. Of those submitters identifying an interest, landholders and local government submitters favour this option more than

recreationists. However, the suggestion of reliance on the Trespass Act drew a lot of comment from submitters. Some question how effective it is, consider it time consuming and unproductive, and feel the police are unwilling to prosecute over incidents such as might typically be encountered in an access dispute.

> We do not believe the Trespass Act is truly effective against poachers, hunters, vandals or even those who have been warned not to trespass, yet still do. It works where the receiver of the notice is clearly identified by the sender of the notice. Effectively it has to be a situation where the "trespasser" does not want to leave, eg after a mortgagee sale.

Other submitters consider the Act to be an inappropriate tool to deal with access issues because it is draconian.

> The Trespass Act is very strong. Inadvertent or innocent trespass should not attract prosecution. There are very few prosecutions brought under the Trespass Act, perhaps reflecting that the Act is on the draconian side compared to many other nations, with trespass being a criminal rather than a civil offence. The Act invokes a very adversarial approach that probably inhibits sensible solutions, which are more likely to arise through mediation.

One submitter seeking increased access suggests a trade-off, with enhanced access bringing more effective enforcement of landholders' rights.

> I have no simple or simplistic solutions to offer, but can only suggest the underlying principle that, since I feel that access over private land in certain situations should be more open than at present, and there should be more marginal access strips along rivers and foreshores; therefore the trade-off for this should be more severe penalties and effective enforcement so landowners' rights are safeguarded.

Overall, many of the submitters who comment on the Trespass Act would like the Act to be reviewed to provide a workable statutory base for regulating improved access.

8.4 Other options

8.4.1 Depends on circumstances

Many submitters feel the method of dispute resolution will depend on the nature of the dispute, and that various methods may be used.

> Depending on the seriousness of the action concerned and at what level it should be dealt with. Obviously simple matters may be dealt with by issuing a formal caution by a Fish & Game Ranger. Or full Police involvement and arrest powers established under current or specifically introduced legislation. Mediation is a weak form of time wasting. You either are or you aren't. It is or it isn't. Someone needs to make a decision and carry the can. That's what high salaries are for. The court system may be required for many of the issues involved regardless. Many of the concerns will not be new to NZ law.

8.4.2 Minimising disputes

There are submitters who suggest the situation is quite clear and disputes are therefore unlikely – everyone has the right to be on public land and access over private land must be by request and agreement. Other submitters suggest that accurate information clarifying rights and responsibilities and identifying public access areas will minimise disputes.

8.4.3 Use of existing laws

There are also submitters who feel existing laws can be used to resolve access disputes. Legal disputes can be resolved by the organisation responsible for access on that particular land. Other submitters feel that, regardless of how unsatisfactory the current situation is, it is easier to leave it standing.

> The Trespass Act is impossible to enforce in rural areas where strangers refuse to co-operate. Only option is to leave as is now.

8.4.4 Failure of dispute resolution and penalties

Some submitters question what will happen if the dispute resolution process decided upon fails, and what the penalties will be. It is suggested that access may be withdrawn.

> If problems occur, such as the proposed code of conduct being ignored and affecting the surrounding landowner, there could be a warning system whereby a notice is publicised warning that if the behaviour occurs again (perhaps within six months) then the access will be closed (perhaps for 12 months). This would need to be put in all the newspapers as appropriate and put on the sign at the start of the walk.

A number of submitters consider that, if agreement cannot be reached, "the rights of the public to access the outdoors of New Zealand shall take precedence".

8.5 Intractable situations (where a landholder refuses to negotiate)

To some submitters, it is not clear what situation is being referred to when the consultation document refers to landholders "refusing to negotiate". There is, though, a strong response from submitters across interest groups that landholders cannot be forced to negotiate access over private land. Many suggest, however, that, if land is sufficiently desirable for public access, then it can be purchased using the Public Works Act, 1981.

> If a person wanting access has no legal right, a landowner is not compelled to provide access.

> The Public Works Act provides a mechanism whereby private land can be compulsorily acquired where the acquisition would be of national benefit. If the community values an accessway through private land then the community should be held accountable for that expectation and the landowner fully and fairly compensated.

Other submitters (largely those with recreational interests) feel that new legislation is required to ensure that legal access is gained to, for example, all water margins. Some of these submitters consider that using such legislation to enforce access should be the last approach taken, after attempts to negotiate have failed.

> Where denying the right of access affects a great many people the agency should have the power to set up public access without landholder consent.

Some submitters feel that an access agency or other responsible organisation should find alternative access or revisit access when the private land in question is sold or the landholder seeks resource consent or tenure review.

> The person seeking to negotiate access should back off. Eventually the landowner will change or seek to develop in a way that requires resource consent. That would be the time to persuade them to provide for public walking access.

Generally, submitters are clear that, if the situation involves a landholder denying public access over an unformed legal road or other public access way, then there are existing legal means to address this situation.

Some submitters suggest that, where a landholder has denied public access across private land where there is "exclusive capture" of hunting or fishing, the right to charge for access should be denied through legislative change.

> If the landowner refuses to negotiate any access, this could most probably not be resolved; however, if a landowner should be charging for crossing his land to a specific recreational facility, ie trout fishing, this activity should be denied to him through appropriate law amendments to the Conservation Act and sections in the Wildlife Act.

Water margins where the water course has moved are considered to be rather more complex by submitters. These situations are not extensively referred to by submitters here but are discussed in more detail in section 10.

Some submitters suggest negotiation should be used, while others suggest sufficient money will eventually change anyone's mind, and others feel giving monetary compensation for allowing access (rather than for direct costs) will not ultimately enhance public access generally.

> Incentivise for landowners who provide something extra or suffer serious inconvenience; not helpful to compensate.

9 Property rights

Background (from the 2003 Reference Group report and from public meetings)
Landholders have expressed strong views about the sanctity of private property. A particular concern is that access proposals may be seen as a taking of an interest in land without compensation. These concerns arose over the concept of a deemed access right arising from the Reference Group's investigations – however, the Government abandoned legislation proposed to give effect to this concept. The only statutory mechanism for creating new access over private land is the creation of esplanade reserves and strips under the Resource Management Act 1991. Reliance on negotiation for new access would protect owners' property rights.

Statement to submitters: Please comment on any other property rights issues that may be of concern.

9.1 Key points made in submissions

- Submitters who are focused on protecting private property rights are concerned that changes to current public access arrangements pose both immediate risks to the safety of landholders and access users and to biosecurity, and longer-term risks to landholders' ability to manage their land as they see fit and to property values.
- Submitters who are focused on public rights to access public land are concerned that this access is being limited and that some changes need to be made.
- There are a number of submitters who suggest that a balanced view of property rights is required, that freehold rights are not unlimited, and that an access agency should be dealing with any questions that impact on property rights.

9.2 Private property rights

Many submitters commenting on protecting private property rights are concerned that any changes to current public access arrangements pose a risk to property rights, personal security and biosecurity. These submitters cite instances of vandalism, litter, theft and assault. Landholders also have concerns about managing large numbers of access users (regardless of their behaviour), and feel that monitoring visitors is untenable for them. Submitters have safety concerns for themselves and their families and for access users on land without the landholder's knowledge, for example, when hunters are on a property at the same time as other access users, or landholders need to warn users of hazards. These situations also raise questions about liability.

Some suggest statutory indemnity must be provided for landholders, while others raise questions about increased insurance premiums.

Submitters also note it would be impractical for landholders to enforce their property rights where access users make an assumption that land is public. Some landholders have concerns about who will pay for costs such as fencing, and are worried about unfettered access to private land given the lack of fencing. Concerns are also raised that any imposition of access on landholders risks the withdrawal of their goodwill. A number of submitters emphasise that current levels of goodwill must not be diminished by forcing unwanted changes to access arrangements onto landholders.

Many submitters with landholding interests have concerns about their privacy, not just for their own enjoyment but also because privacy is considered a marketable feature of property.

> Privacy is essential for cultural integrity and for niche market tourism. The benefits of top end of the market tourism are shared with hapū and the wider community. Privacy that can be shared is an economically realisable concept, especially in tourism.

To a lesser extent, submitters also have concerns about noise.

Some submitters think, because of people's right to enjoy their property, access should be kept to water margins but it is also pointed out that people can have homes very near water margins.

Overall, many submitters consider any change to people asking for access over private land is unfair to rural landholders and a threat to the principle of property rights. Some do not see any reason for the law to be different for rural compared to urban land.

Some submitters are concerned that they have read nothing in the consultation document that merits an increase in public access to private land. Others feel that, unless there is landholder support for any changes made, such changes will be unsuccessful. It is also considered that any changes affecting property rights require further consultation with those affected.

> The Government must recognise that essential rights of land ownership are not diminished and if changes are introduced compensation will need to be provided for; landowners should not have costs of maintenance of access ways or associated, eg signs. Further consultation is required in relation to any funding allocation and administration of such.

In the longer term, landholders are worried about their ability to change access arrangements once made, particularly if land use changes, and that this restriction devalues their property. Specifically, landholders have concerns that they will face limitations on land management under the Resource Management Act as access users may be an "affected party".

Some local government submissions also raise concerns that landholders may face limitations.

> There is risk that by allowing access landowners may forgo their right to subdivide because of the ability for users to argue their right as an affected party. This needs to be assessed and clear direction given so that landowner fears are alleviated.

Local government submitters are also concerned about being able to restrict access to water catchments and flood protection areas. Other submitters have concerns for the natural environment and for historic and cultural features.

> Damage to historic assets on old roads is a concern, eg bridle tracks, hardwood bridges – [there is] scant regard for the Resource Management Act.

Some submitters consider that access must be sought and agreed to on private land (and, in some cases, unformed legal roads intersecting with private land) and that there be some mechanism to allow landholders to restrict access for land management or other valid reasons. Some suggest that standards should apply to persons with a statutory right to access private land, and that landholders must retain the right to be able to prosecute under the Trespass Act. Many submitters with concerns about the preservation of property rights feel that any land required for access must be negotiated and agreed upon, compensated for or purchased as it would be under the Public Works Act.

Finally, a number of submitters suggest that asking this question raises considerable uncertainty for landholders. Many of these submitters referred to the previous access consultation by the Land Access Ministerial Reference Group in 2003 and assurances they had received relating to private property rights. Submitters are disturbed that the issue is being raised again and question at what point they will have security that their property rights are not going to be threatened.

9.3 Public rights

A number of submitters comment on public rights, and particularly the "exclusive capture" of fish and game. Many of these submitters consider that there is manifest and increasing exclusive capture of publicly owned water by an adjoining landowner for commercial gain, that is, where there is no public access to that water. Some (but not all) submitters with these concerns would like to include hunting access, with suitable safety measures taken. Some suggest making pedestrian access part of any sale to overseas buyers, or part of any sale of large blocks of land. Others suggest, if the access is sold, any commercial hunting and fishing should be forbidden. Exclusive capture of fish and game and charging for access are discussed further in sections 22.5 and 22.6.

Submitters also discuss private encroachment of public land, for example, private gardens on reserve land and particularly the private use of unformed legal roads. Views range: some think access users should only have pedestrian use of unformed legal roads that lead to somewhere of amenity value, while others feel that farmers should not have free use of this land, or not without any accountability. Others feel local authorities need more legislative control of these roads, and others that these roads must be dealt with on a case-by-case basis. Submitters' views on unformed legal roads are discussed more extensively in section 16.

Accretion on lake beds is also raised by concerned submitters.

> Land that for many years has been considered to be public land (exposed lake bed) is now being incorporated into private titles, and the public excluded. This situation where private property rights are allowed to prevail over the interests of the general public needs to be addressed if the public are to have access to water margins on lakes.

A few submitters concerned with public access rights also have issues with tenure reviews of pastoral leases in the South Island hill country and with *ad medium filum aquae* rights.[3] These submitters are concerned that opportunities to gain public access are not being pursued with tenure reviews and that ad medium filum aquae rights are an anachronism that limits access and should be removed by statute.

Overall, many (but not all) of the submitters focusing on public rights are concerned that public access to public land is being increasingly limited and that changes need to be made.

> The essential question is whether landowners should be able, as at present, to deny access across, or adjacent to their property as they see fit. If so, there is no improvement to the status quo and the issue will not have been addressed. If this is the outcome of this process, it would have failed the legitimate interests of the recreating public.

However, these changes need not necessarily be legislative changes to property rights.

> One of the main issues with public access is that the boundary between public and private land is not clearly defined. It may also be necessary to cross private land to get to the public land. There is also an issue that it is not appropriate for landowners to deny access to public land such as paper roads or river beds. The best approach would seem to be a combination of user education, clearly marked access ways (eg with pegs) and managed access, eg signing in and getting a key, with a deposit, and even paying a reasonable track maintenance fee, especially for

[3] The literal translation of ad medium filum aquae is "to the centre line of the river". The term refers to the English common law presumption that the beds of non-tidal rivers and lakes were owned by the adjoining landholders to the centre line or centre point.

> vehicle use. Closing access at certain times, such as lambing or periods of high risk (weather, fire, etc) is normally acceptable if it is advertised and people are able to confirm access before turning up.

9.4 Property rights generally

Some submitters discuss property rights generally, with a number pointing out that freehold rights are limited now and that access across land does not interfere with property rights as long as landowners' use is not affected.

> The Panel should signal that "rights" are misleading, they are qualified privileges – granting access does not equal loss of property rights.

A few submitters suggest that people should not have to own property before they are allowed to walk over it, and that legislation needs to be more community focused, such as the common law access available to people in some other countries. Other submitters, however, feel that such examples are not applicable to New Zealand, where there is no public subsidy of farming.

Some submitters suggest there is a need for a balanced of private and public rights.

> Achieving balance between public and private rights is essential. Land ownership is not absolute. Public expect reasonable access to [their] own resources while recognising legitimate private property interests.

Other submitters consider the Panel should be dealing with questions affecting property rights.

10 Realignment of displaced water margin access

Background (from the 2003 Reference Group report and from public meetings)
A significant portion, possibly half, of water margin reserves (the Queen's Chain) has been affected by erosion so that it no longer adjoins the water margin as it did when established. Realignment of these reserves is technically difficult. Legislation may be required to achieve realignment on a significant scale.

Questions asked of submitters: Do you support the realignment of water margin reserves where these have been displaced? Is there an alternative that would make these reserves practically usable?

10.1 Key points made in submissions

- Most submitters conditionally support the realignment of water margin reserves where these have been displaced.
- A range of views are expressed, however, about whether this is best achieved through negotiation (case by case) or by legislation. Most commonly, submitters feel that such realignment should be negotiated and agreed with the adjacent landholders.
- Some submitters think realignment should occur only in particular circumstances, for example, where there is a proven need for access.
- Submitters note that the increasingly common requirement that water margins be fenced and planted has an impact on access.
- Some submitters think realignment will require legislation, for example, that water margin reserves should be redefined as esplanade or marginal strips (post 1991).
- While some submitters think that compensation is appropriate (either monetary or through a land swap), other submitters think that compensation is inappropriate, except under extreme circumstances.
- Submitters opposed to the realignment of water margin reserves consider that realignment is taking of land, and that erosion and accretion are acts of nature that must be accepted.
- Alternative suggestions to address displaced water margin reserves are largely based on negotiation.

10.2 Conditional support for realignment

Most submitters (across interest groups) responding to this question support the realignment of water margin reserves where these have been displaced. Some suggest that there is little point having a water margin reserve not on a water margin. Other submitters think realignment is the only way of making displaced water margin reserves practically usable. A range of views are expressed, however, about whether this is best achieved through negotiation (case by case) or by legislation.

Many submitters support realignment only under certain conditions. Most commonly, submitters feel that such realignment should be negotiated and agreed with the adjacent landholders. It is pointed out that negotiated access is more cost effective than changing legal margins. Some submitters would like to see such realignment prioritised, starting with willing parties or the recreational significance of the water margin.

> Marginal strips in the future will need to change with the course of the river. It is unknown how many of these situations exist around NZ, but they would need to be prioritised in terms of the significance of the water body for recreation. In many situations it may be that only some sections/reaches of rivers need to be done. In other cases, the recreational usage may not justify the need to spend resources on reclassification of land.

Although some submitters want the water margin reserves to be continuous (land contour allowing), other submitters think realignment should occur only in particular circumstances. These circumstances include situations where there is a proven need for access, major anomalies or cases of high public interest, where access to particular features would be gained or where the access gained is practical. Other submitters feel realignment is only appropriate if it does not affect the adjacent landholders' use of the land, or does not come within a certain proximity of residences. Some find realignment acceptable if the former access is extinguished, although others think currently unused accessways should be left for future use. It is also suggested that not many water margin reserves need to be reinstated.

> Many of the water margin reserves are no longer on water margins of significance to accessors and do not need to be reinstated. The creation of access rights using the sufficiently described type of legislation should be sufficient.

Some submitters distinguish between types of land lost and suggest that if it is a track, realignment should be negotiated, but if it is shoreline, the water margin reserves should follow the water.

Submitters point to the competing uses for water margins. Environmental concerns are raised by a small number of submitters wanting to ensure public access does not override all other values.

Submitters across interest groups note that landholders are encouraged by regional councils to fence and plant alongside waterways. Some submitters state that the water margins then become impassable due to weeds, obliging access users to walk on private land. It is suggested that the Government pay for the upkeep of the margins.

> Regional councils have been promoting fencing of waterways which then become choked with weeds thus walkers walk on adjacent pasture – private land – rather than stumble through weeds.

It is also pointed out that city and district councils want to develop walkways and cycleways along such areas. Local government submitters consider there is a need for careful planning about who maintains and pays for such routes.

While a number of submitters consider that location of the access margins should simply be tied to the location of the waterways and automatically allow for the natural realignment of the waterways that occurs, others are concerned with ongoing costs of monitoring and surveying. A few submitters thus variously conclude that any realignment is not worth doing at all, that there should be no change to legal margins, that access could be noted on land titles and not surveyed, or that map revision should be done every 10 years.

> [Realign] where practicable. Map revision every 10 years. Some will gain and some will lose and won't like it.

A few submitters want certainty, and consider any access must be surveyed and marked.

10.3 Legislation

While some submitters support realignment but not the use of legislation, other submitters think realignment will require legislation, for example, that water margin reserves should be redefined as esplanade or marginal strips (post 1991). Several submitters discuss the legal process of deeming to make water margin reserves into marginal strips in exchange for stopping unformed legal roads of no access value, or deeming legal access to exist on the nearest practical route. However, submitters are also aware that deeming access was considered unacceptable in the 2003 consultation about public access. Overall, submitters suggesting that displaced water margin reserves be addressed through legislation argue for legal protection for the intent of access.

Submitters express a range of views about the legal implications of realignment. Some local government submitters consider that there are practical implications from trading off existing reserves and unformed roads for a new type of legally undefined water margin reserve. A

few submitters consider that legislation is already in place that allows realignment in many cases.

> Section 233 of the Resource Management Act 1991 provides for esplanade reserves to move along with alterations in the mark of any mean high water springs or the bank of any river or the margin of any lake.

However, others consider that the Land Transfer Act 1952 is a mechanism that can be used to protect property rights in such circumstances.

> The Land Transfer Act 1952 allows the registered proprietor of the land to apply to the registrar to have titles amended to reflect movement of water bodies over time. I oppose any attempt to alter this – it is protective of property rights.

10.4 Compensation

Some submitters think that compensation is appropriate, either monetary or through a land swap (for example, the adjacent landholder having the use of or the title to the former reserve in exchange for the new water margin reserve). These submitters emphasise that any land swap should not reduce access for users. A few submitters think that compensation is inappropriate except under extreme circumstances. Several consider realignment to be in the interest of landholders as it keeps access users from their paddocks.

> Realign the Queen's Chain: To restore its access purpose, where it is no longer on its water margins, in most cases this would also be in the landowner's interest as the existing Queen's Chain would often give access to areas where they would prefer the public not to be (in the middle of their paddock).

Generally, the question of compensation is considered difficult by many submitters.

> Accessways, marginal strips, public roads, paper roads, etc should be moveable, the issue of compensation for loss of productive land being a difficult one. On the one hand we observe the overcompensation which has occurred in the high country review process, on the other hand we recall the often unjust requirement for farmers to bear the cost of protection of natural features and biodiversity occurring on their land, without some kind of public compensation for economic losses on behalf of the public good when the Resource Management Act processes kicked in during the early 1990s.

10.5 Opposition to realignment

Submitters opposed to the realignment of water margin reserves consider that realignment is taking of land, and that erosion and accretion are acts of nature that must be accepted.

> If a water margin reserve is eroded then it should be lost. The same applies to privately held land should the erosion remove land within that private title.

> No, it equals taking of land and smaller farms may become unviable if this is done.

A number of submitters with landholding interests are opposed to realignment unless the land is surveyed and compensation paid as under the Public Works Act. Many of these submitters think that an alternative to realignment is access users asking landholders for access.

A few submitters feel that the scope of the issue has been insufficiently explained for them to comment, and others consider the realignment of water margin reserves needs to be reviewed legally, rather than by public opinion.

10.6 Options other than realignment

Submitters offer a range of suggestions other than realignment to address displaced water margin reserves. These suggestions are largely based on negotiation. One suggestion is that gaps in water margin reserves be covered by foot tracks created by easements in perpetuity, open to non-motorised users (several submitters comment on having hunting access in these circumstances). It is also suggested that such tracks be put under a Queen Elizabeth II National Trust covenant or that easement access could be paid for as a property right.

Other submitters think gaps in water margin reserves access could be addressed through:

- negotiation of a moveable right of way;
- negotiation and poled routes;
- negotiated access that is not legal – the legal access would remain but people would use the more practical access;
- negotiated access to, but not along, the displaced waterway;
- people being allowed to walk along the top of stop banks.

Some submitters question why access must be from dry land and suggest that users take a boat.

A number of submitters feel that access issues generally, including displaced water margin reserves, require a negotiated case-by-case approach.

> Where access problems can be shown, identification, rationalisation and education are the best solutions. A stocktake of existing and unformed accessways will help work out where access is and is not a problem. Clear definition of existing and unformed accessways means current access can be clearly defined and gaps in the network recognised. Where more practical access routes can be negotiated, redundant access routes should be retired. Any access arrangements, whether by individuals or agencies, should be negotiated directly with the landowners. An informed process like the one described would more than capably address the issue of ensuring water margin reserves were made useful – a more valuable measure than usability.

11 Gaps in water margin access

Background (from the 2003 Reference Group report and from public meetings)
Many recreational users were concerned that water margin access is incomplete. It was also suggested that providing access by esplanade strip or reserve on subdivision is a slow and intermittent method of extending public access along water margins. Concerns have also been raised about access across private land to other public land.

Question asked of submitters: There are gaps in public access to water margins. How do you think these gaps might be remedied?

Possibilities include:

- *voluntary agreement on a case-by-case basis between landholders and users;*
- *an arrangement whereby landholders agree that the land is to be held in trust for access purposes, in a manner similar to that provided for in the Queen Elizabeth the Second National Trust Act 1977;*
- *establishment of esplanade reserves or strips on subdivision;*
- *the acquisition of the land or easements over the land by or on behalf of the Crown;*
- *the scrutiny of acquisition of land by overseas persons as provided by the Overseas Investment Act 2005;*
- *any other process you believe is appropriate.*

11.1 Key points made in submissions

- Many submitters support using a mix of the mechanisms suggested, depending on the circumstances.
- With respect to the individual options suggested, voluntary agreement on a case-by-case basis between landholders and users is submitters' single most favoured option. It has support across interest groups, and is regarded as a straightforward and appropriate method of addressing gaps in water margin access, although not without problems.
- All other options have similar levels of support, particularly as part of a combination of mechanisms.
- Few submitters want to exclude any of the suggestions completely.

Submitters provide extensive comment on the options provided in the consultation document, and offer general suggestions irrespective of what mechanisms are used to remedy gaps. These comments are discussed below.

11.2 Voluntary agreement on a case-by-case basis

Voluntary agreement on a case-by-case basis is well supported by submitters across interest groups, relative to the other options suggested in the consultation document. It is regarded as a straightforward and appropriate method of addressing gaps in water margin access. Some submitters commenting on this option suggest that voluntary agreement be recorded so there is a clear understanding of the arrangement. Other submitters note that voluntary agreement should not preclude the possibility of compensation being paid. Submitters also want the basis for negotiation to be clear, so that the primary objectives cannot be traded away so that any new access that is negotiated does not result in lesser rights to the public.

Submitters opposed to this option point out that voluntary agreements are the status quo, and do not offer access arrangements that are binding or enduring, that users do not know who to contact and landholders can find the amount of contact with users a burden. Also, only those aware of the information get to use the access. Another difficulty with voluntary agreements is that there is no "big picture" and access tracks may not go further than a property boundary.

To mitigate some of these aspects of voluntary agreements, submitters suggest landholders require clear guidance about what they are "letting themselves in for" by entering into a voluntary agreement. It is also suggested that enduring agreements are negotiated. Some submitters propose that the voluntary agreement should be between the landholder and the local authority: this would let landholders know someone has taken responsibility and would also ensure access arrangements apply to all users.

11.3 Land to be held in trust for access purposes

Some submitters consider the option of landholders agreeing (voluntarily) to hold land in trust to be a cost-effective first step to obtaining access that gives immediate results. This option is considered by others to be an appropriate long-term solution that could provide security of access and national consistency.

Submitters supporting this option note that a process other than surveying will need to be used to limit costs.

> This is an expensive process and is no longer serviced by a Walkways Commission or local Walkways Committees. A more straightforward process than formal survey would be more appropriate, provided this is enduring and certain.

It is also suggested that local authorities pay the costs of fencing and an annual payment to landholders for upkeep, with the landholder

continuing to farm unhindered; also that adjacent landowners have the right to object, as they do in the Resource Management Act process.

Note that some submitters explicitly exclude the Queen Elizabeth II National Trust from this role, because they do not want it "compromised" by being involved with access or because its emphasis is on conservation, not access.

A few submitters consider this option unsuitable but have not provided further comment.

11.4 Esplanade reserves or strips on subdivision

A number of submitters (although comparatively fewer landholders) support this option, generally in combination with other options suggested in the consultation document. Many of the submitters discuss local authorities' administration of this procedure. Generally, these submitters feel that local authorities are reluctant to pay compensation to landholders, that they waive rights to take reserves or strips, and that they cannot always maintain reserves taken. Submitters feel there is a need for better reporting by local authorities on the reserves and strips created, a need for an access agency to ensure appropriate provision in district plans and a right of appeal against inappropriate decisions.

> The establishment of esplanade reserves or strips on subdivision would be desirable. The biggest issues however appear to be that local authorities have little or no overview over where the establishment of esplanade reserves and strips would be desirable, little desire to create esplanade reserves and strips where there is landowner opposition, and no process that allows for public submissions.

Some submitters want the Resource Management Act amended to make esplanade reserves compulsory on subdivision (to abolish the four-hectare limit and establish reserves on any sized subdivision), or to take strips or reserves in all cases along priority waterways. Some submitters want a national policy statement to give effect to section 6 of the Resource Management Act to ensure national consistency, while some want marginal strips taken during subdivision tenure reviews and whenever the landholder changes (by sale of property or change in the beneficiaries of trusts). Others suggest a case-by-case approach. Overall, the current process for taking esplanade reserves or strips is considered too slow and more exclusive than necessary.

However, a few submitters object to the taking of esplanade reserves or strips on subdivision because they are not site specific, or because they are funded entirely by local authorities or landholders. It is also considered that fair compensation is not paid and that it devalues land.

> This is a requirement in most local authorities' district plans – an unethical form of blackmail – property owners without water body margins do not have to forfeit land when subdividing.

There is also opposition to linking the creation of esplanade reserves and the provision of access.

> We strongly oppose any linkage between provisions for access and the creation of esplanade reserves. The Resource Management Act sets out the statutory criteria for the vesting of reserves on subdivision. They are quite specific and were quite obviously enacted to achieve a different pattern for the development of urban living in what had previously been a rural zone. In our view, it is highly mischievous of territorial local authorities to use these provisions to achieve what in some cases are simply ideologically driven objectives. Some, for example, use a purely technical boundary change between neighbours, where no extra dwellings are contemplated, as a "trigger" to grab esplanade reserves. We should be largely content to allow the Resource Management Act to gradually change the access to water margins situation, as urban populations develop through normal subdivision processes.

11.5 Acquisition of the land or easements over the land

Acquisition of the land or easements over it is supported by a range of submitters. However, there is some confusion as to whether acquisition of land would be compulsory and involve compensation. (Note that some local authority submitters point out that this option should include acquisition by local government.)

A few submitters state that this is an appropriate option if it is voluntary only. It is also suggested it could be done, with the agreement of the landholder and prospective landholder, at the time of sale with a (market value) payment. Other submitters consider compensation would be the sticking point, and each case would need to be assessed. It is suggested that acquisitions be negotiated by an access agency, with a contestable fund for such purchases. A few submitters specifically mention the role that acquisition of land or easements could play in securing access in the tenure review process of South Island pastoral leases.

Some submitters think easements are useful as the land need not be purchased, and that linking easements should be created where there are gaps in water margin access. However, other submitters are opposed to easements as they are "theft" and "as good as [give] access to land they pass over". Some note that, before land is sold, it should be clear to buyers where access is required by easements on the title.

Overall, a number of submitters think acquisition may be necessary, and that both the Crown and local authorities should be, for example, prepared to purchase property, take easements and resell the property. Others suggest using the Public Works Act to acquire property.

11.6 Scrutiny of acquisitions of land by overseas persons

Approximately half of submitters (although fewer landholders compared to the other options) support this suggestion, generally in combination with other options put forward in the consultation document. Some of those agreeing with this option consider that overseas persons acquiring land in New Zealand is one of the main causes of public access issues and that the scrutiny provided for by the Overseas Investment Act 2005 needs to be more robust.

> Yes. Be [tougher] on identifying access for overseas buyers and establishing reserves at point of sale. [There are examples of] verbal agreement to access by overseas buyers, who now refuse all access.

Some submitters think that such scrutiny, or overseeing the process, should be a function of the access agency. Others commenting on this option consider access should be negotiated on this type of land acquisition only if the benefit warrants the cost involved. Some point out that the land is still controlled through the Resource Management Act, and may be offered for sale again within a relatively short timeframe.

> Land owned by overseas people cannot be taken out of the country and still remains controlled by the Resource Management Act through local councils. History tells us that after a period of 5–10 years most of these areas come back on the market and are available for purchase either by local authorities or by local private citizens or organisations. What often gets forgotten in this country is that at some stage every single one of us had ancestors who were foreign.

Those submitters who are opposed to any further scrutiny than such purchases already receive feel that land acquired by overseas persons should not be treated differently to any other land in New Zealand, because to do so is a form of unethical discrimination. Others think it devalues property.

11.7 Any other process or mechanism

A number of submitters (but relatively few identifying as landholders) make additional suggestions to address gaps in water margin access.

Some suggest using (or amending) the Resource Management Act to address gaps, or to secure access to and along all waterways, for example, to link up walkways and roads, using all possible Resource Management Act consents (not just those issued for subdivision) or negotiating for public access along specified routes when coastal subdivision is sought.

> Gaps in public access to water margins could be remedied through legislative change requiring local authorities to provide public access to all waterways. This could be achieved through subdivision rules under district plan, however for this method to be effective changes to the Resource Management Act are required to ensure that Councils comply.

Several submitters refer to unformed legal roads. Proposals include:

- creating a mechanism to transfer unformed legal roads when land is subdivided (that is, from their present location where they provide no value to a water margin on or adjacent to the same property);
- reinstating access along unformed legal roads (where it has been lost by obstruction or lack of information);
- empowering an access agency to require local authorities to obtain its approval when closing, transferring, selling or disposing of land that contains an unformed legal road or other public accessway.

Other submitters think legislation will be required. One example is using legislation to create access when land is leased or sold, perhaps through a Land Act. A few submitters propose deeming legal access to exist, for example, on the nearest practical route, or along and around all waterways, or by creating a legally enforceable poled route along waterways.

> Perhaps bring in some Land Act that whenever land changes title it automatically returns the margin access to the Crown for the benefit of everyone. (Confiscation in effect, but only at the point of title sale.) Perhaps a legally enforceable provision that requires a landowner to provide a signposted poled route along waterways. The key argument here should be that the public own the water and if access is required to it then it should not be unreasonably withheld. It is by the goodwill of all the public that the landowner is allowed to use the public water. It is in this spirit that the public should be allowed reasonable access to water margins.

Some suggest legislation to restore any lost access but not to implement new access.

Other suggestions made by submitters are:

- land swapping – for example, swapping stranded Queen's Chain for moveable marginal strips alongside water bodies;
- an access agency administering covenants;
- encouraging gifting by the landholder to preserve historic accessways;
- trading of rights;
- attrition – waiting for properties to change hands;
- revitalising the New Zealand Walkways Act 1990;
- reviewing all statutory triggers to enlarge the Queen's Chain:

> Access issues arise with land use change. Previous mechanisms may no longer be appropriate after change. Statutory triggers to enlarge Queen's Chain are slow and inadequate. Review these and extend their basis for the creation of new access.

In contrast, one submitter suggests that gaps in access be addressed by negotiation and agreement with the landholder's approval, and payment of an annual fee to landholders.

11.8 General comments made by submitters on gaps in water margin access

Some submitters provide general comments applicable to all (or none) of the options listed in the consultation document. The general themes of these comments are listed below.

- Some submitters think not enough information has been provided. For example, how have gaps been identified? What is a significant body of water? Some want the boundaries of publicly owned access strips to be identified and marked, and gaps identified so that opportunities to acquire links are not lost.
- Other submitters consider that the public do not need access to every possible stretch of water for the following reasons – some places are unsuitable for safety or environmental reasons (some areas of the natural environment need to be protected from human activity); in some regions, the affected areas are of little public interest and do not warrant any change; and water quality regulations may affect the public's ability to access water margins.
- A number of submitters consider that each situation is different and therefore support a case-by-case approach. It is pointed out that, whichever methods are used, money will be required for compensation and maintenance. Some submitters feel methods of addressing gaps will depend on the community and the future of the area, and therefore local boards could manage the process. However, other submitters feel an access agency is needed to ensure that available mechanisms are used. For example, it is pointed out that much access could be secured if local authorities enforced by-laws. Some submitters are content to take a long-term approach and rely on existing means, such as the effects of subdivision.
- Some submitters think the only long-term solution is legislation; however, others feel that compulsory acquisition often leads to later litigation.
- Other submitters think all arrangements must be voluntary and landholders should have choice. It is suggested that access arrangements should offer landholders benefits. Some consider there should be no public access near homes, driveways, facilities and stock races.
- Some submitters think solutions must ultimately be made permanent, while others note that access issues arise with land use changes and will continue to do so.
- A few submitters consider that unformed legal roads are as important as water margins, and are being lost (unformed legal roads are discussed more extensively in section 16).

12 Negotiated access

Question asked of submitters: What would encourage landholders to agree to formal, certain and enduring legal access?

Possibilities include:

- *monetary payment;*
- *rates relief;*
- *provision of fencing, signage and/or maintenance;*
- *provision of facilities such as toilets and car parking;*
- *ability to close or restrict access at certain times;*
- *ability to shift the route at certain times;*
- *removal of any liability to persons exercising access;*
- *the ability to trial the right of access before deciding;*
- *indemnity for damage caused by a user;*
- *the establishment of a code of conduct;*
- *other suggestions.*

12.1 Key points

- Generally, many submitters consider that a combination or all of the above suggestions may encourage landholders to agree to access, depending on the circumstances and if the negotiations are voluntary.
- The suggestion of monetary payment is extensively commented on by submitters, who express a range of views. Many submitters are open to the suggestion of monetary payment to landholders for actual costs incurred.
- Rates relief, while considered an option by some submitters, is also thought to be complicated to work out, with a high cost in relation to benefits.
- Most submitters support the provision of fencing, signage and/or maintenance as a method of encouraging landholders to agree to access. Submitters agree there should be no cost to landholders.
- Overall, most (but not all) submitters think there may be some situations where facilities may be required and would encourage access to be given. Some submitters think facilities are not a high priority, and question who will maintain them.
- The ability to close or restrict access at certain times is generally favoured by submitters, if it is done in a fair and reasonable way.

- Submitters favour liability being removed from landholders, although there are a range of views about how this can be achieved and the extent to which they have liability now.
- The ability to trial the right of access has some support from a range of submitters, although it is considered complicated. Recreationist submitters emphasise that the trial should focus on how access may be allowed, not whether it is allowed.
- Generally, submitters consider that access users should be liable for damage, particularly careless damage. However, it is also thought that there will be difficulties proving who caused the damage, and suggestions are made that users obtain insurance.
- Submitters support the establishment of a code of conduct in combination with other measures.
- Submitters also make a range of other suggestions, from retaining the status quo to legislating for access.

12.2 Monetary payment

The suggestion of monetary payment is extensively commented on by submitters, who express a range of views. It is pointed out that some landholders have previously donated access and that payment may encourage a selfish perspective, undermining traditional goodwill and coercing the public or encouraging landholders to "hold out" for money.

Another view is that private economic return can be derived from added value but this should not be a condition of use of the accessway. Also, there should be no expectation that landholders will gain financially from the existence of public resources on or next to privately occupied land.

> Monetary payment would be supported where land is acquired for the purposes of public access, or where land is no longer able to be used (e.g. farmed) because of the nature of the access. Payment for the "right" of access is not accepted.

> It is imperative that the basis for any compensation does not imply that reasonable uses of land by private landowners include capture of the public interest aspects, such as access to public land, use of fisheries, wildlife or water, or to non-grazing parts of pastoral leases.

Some submitters emphasise that any payment could only apply to access over private land to waterways and public land, and for actual costs.

> For access over private land to rivers, lakes and public land … but not for land adjoining rivers and lakes (i.e. the equivalent of the Queen's Chain).

> What is payment for? … Who compensated for what? Transaction costs of access over private should be met by access agency. Must set out rationale for compensation: demonstrable loss to or use of any property right, not for cost of stiles or signs.

Other submitters think that monetary payment could motivate landholders to provide access. Some consider payment may be appropriate for large areas of land or as a once-only payment, but not as annual rent, and that payment should be for actual costs, not the sale and purchase of access rights. Other submitters consider the payment should be in the form of annual rent, or grants for maintenance or loss of income – financial recognition that providing access has costs.

> Greater consideration needs to be given to the allocation of costs where private land is used to access public land. Direct and indirect costs associated with maintenance obligations will require more than goodwill and reduced regulatory risk. Increased access will result in increased costs for landowners through the need for increased security, gates, locks, control of rubbish, pests, weeds, etc and other unforeseeable costs to the landowner. Private landowners will require certainty that activities can continue undisturbed and that any additional costs as a consequence of improved public access are compensated.

In addition, some submitters feel that monetary payment should be a core element in negotiations, not leverage that can be applied or withdrawn. Another view is that payment will confuse the issue and cause delays to negotiating access. Some think it is appropriate for land acquisition or negotiation of easements. Others point out that finding the money for payment may be problematic, and that it sets a precedent with which many will not agree.

12.3 Rates relief

Views diverge on whether rates relief is an appropriate method of encouraging access. Some submitters consider rates relief inappropriate because landholders still have the use of the land. Others think it is appropriate as landholders are providing a public service by granting access. Some consider it may be useful for small areas of land. It is also pointed out that legislation would be required to offer rates relief to landholders granting access, and it would be complicated to work out and have a high cost in relation to benefits. A further view is that there is no need for rates relief, as granting access devalues land and thus achieves a rates reduction. Some think any rates relief should be subsidised by central government.

12.4 Provision of fencing, signage and/or maintenance

Most submitters support the provision of fencing, signage and/or maintenance as a method of encouraging landholders to agree to access. (Note, though, that fencing is variously considered necessary and unnecessary by submitters. One view is that it is not considered necessary if the land is best farmed, as weeds will decrease access. Overall, submitters consider there may be some necessity for fencing

and signs.) It is generally agreed that the Crown should meet all costs associated with fencing, signage and maintenance, or that the Crown meets the cost on private land and territorial authorities meet the cost on public land. However, the physical provision of signs etc could be administered by territorial authorities. Other submitters suggest landholders are given grants for maintenance. Submitters agree there should be no cost to landholders.

12.5 Provision of facilities such as toilets and car parking

Overall, most (but not all) submitters think there may be some situations where facilities may be required and would encourage access to be given. This is generally in areas of high use such as at major access ends. Some submitters think facilities are not a high priority, and question who will maintain them. Another suggestion is that DOC should provide facilities or that they could be quite minimal, for example, a "small composting loo", where required. Other submitters are cautious about the effects of providing facilities.

> The provision of amenities, e.g. toilets, car parking, would need to be co-ordinated carefully at district and regional level and in some cases restricted, to ensure that existing intrinsic values, e.g. remote recreational experience, public safety, conflicts between different recreational users and also with landowners, and that excessive pressure is not placed on local resources. For example, car parking and toilets may create local problems by attracting tourist camping vans, or creating a de facto campsite.

12.6 Ability to close or restrict access at certain times

The ability to close or restrict access at certain times is generally favoured by submitters because of operational issues (for example, lambing) and biosecurity risks. Many users agree that this should be an option if it is done in a fair and reasonable way and there is timely information available about the restricted access. There is some concern expressed about the risk of abuse if restrictions are not monitored, and it is suggested that any restriction should be agreed to by an access agency and should be confined to normal farming activity on accessways through private land.

> Acceptable in liaison with and in agreement with [an] access agency. But, if restriction is sought and [it is] then discovered that access [is] provided for a few or those paying – restriction denied in future.

12.7 Ability to shift the route at certain times

This option has approval from a range of submitters, as a matter of ongoing liaison and negotiation, perhaps through an access agency. Some submitters feel it is an option only suited to unimproved access, while others think it creates uncertainty and is unrealistic.

12.8 Removal of any liability to persons exercising access

There is confusion among submitters as to whether this suggestion means liability is removed from landholders or users. However, responses clearly favour liability being removed from landholders. Landholders express concern over their liability to users, with a few citing the Berryman case. It is felt that allowing access increases landholders' liability under the Health and Safety in Employment Act 1992.

> Managing public access increases owners' culpability under Health and Safety Act liability therefore public access to forest needs to be curtailed or managed, the costs of which need to be met.

Some submitters suggest that, if free access is granted, landholders should have no liability, while others suggest that landholders should have no liability as long as no injury is caused by the unsafe management of farm operations. Others feel common law responsibilities must apply, and that it is not possible to remove liability unless the access is a gazetted walkway. Others state there is no need to debate liability, as it is clear under law that a landholder is only required to notify known public users of unnatural hazards.

12.9 The ability to trial the right of access before deciding

The ability to trial the right of access has some support from a range of submitters. Some, though, consider it too complicated, or allowable only if it is on private land and there is no (public) investment in the accessway. It is emphasised by some recreationist submitters that the trial should focus on how access may be allowed, not whether it is allowed.

12.10 Indemnity for damage caused by a user

Generally, submitters consider that access users should be liable for damage, particularly careless damage. This option is considered a necessity by some submitters if owners consent to access. However, it is also thought that there will be difficulties proving who caused the damage, and some submitters express caution about landholders claiming that users have caused damage.

There is particular concern from landholders about their liability for fire damage (some submitters suggest landholders be compensated 100 percent for fire damage). Some submitters note that recreational clubs can get indemnifying insurance more cheaply than individuals; other submitters suggest that DOC or the Crown (perhaps through an access agency) indemnify the public, but it is also pointed out that this would not be possible unless the accessway is a gazetted walkway.

> The average tourist or New Zealander would be off like a robber's dog and litigation is expensive. Government should pay for damage then do own recovery.

12.11 The establishment of a code of conduct

Submitters support the establishment of a code of conduct in combination with other measures. Questions arise as to who will enforce such a code, but it is felt to be necessary if a landholder allows access. Some agree if it applies to private land only.

> I think this is pointless – it assumes that everyone that comes onto private property is inherently law abiding – this is not the case. With the urbanisation of New Zealanders they do not have stock sense. They are totally unaware of the harm they are doing; there are considerable animal health issues that need to be taken into account. We have had stock drowned, killed in electric fences and smothered; the people that caused this were unaware of the damage they caused.

12.12 Other suggestions made by submitters on negotiated access

12.12.1 Status quo

Some submitters are not convinced there is a need for formal mechanisms to negotiate access and want to keep the status quo. It is felt that progress will be made through subdivision, under the Overseas Investment Act and through tenure review of South Island pastoral leasehold land. Some recreationists are happy to provide identification when on private property, and one suggests donation boxes could soften the impact on landholders of providing public access. Some submitters consider face-to–face meetings with landholders to be the most valuable tool for negotiating access, but problems arise with this on corporate and Māori-owned land.

A number of submitters feel there is a place for educating landholders and users, particularly in relation to behaviour expected from both parties and the issues involved in granting access over private land.

> We can make the majority of considerate users aware of the fact that they could lose the privilege of access if the minority of inconsiderate users are tolerated. It becomes self policing. This works. I submit this is a fair representation of the vast majority of relationships between landholders and recreational users. In the minority of cases where this does not work, it does not warrant the attention and potential dishevel currently levelled at the issue. For these cases the Government has the right to negotiate for property on a case-by-case basis, if it has the political will to do so, it requires no extra legislation to achieve it.

12.12.2 Negotiate

Other factors considered to encourage landholders to agree to access are preservation of property rights (including the right to refuse entry), control of information about private property, clear and real penalties

for intentional damage, and the ability to withdraw access if problems persist.

> Major encouragement for landowners: private property rights will not be compromised through any agreement. Including: people not wandering or trespassing on areas not part of agreed access; activities on adjoining land not compromised; owners not responsible for public's actions (e.g. fire, rubbish); access doesn't lead to additional costs for adjoining landowner; able to restrict access at critical periods. Uncertainty of private property owners is major hindrance to agreements being reached.

Added to this, a few submitters feel there should be a total restriction on dogs. Others want mechanisms to include (the potential) for all types of access.

Some submitters feel there is a need to negotiate with owners to reach a consensus, rather than imposing any particular mechanism on landholders. It is considered that momentum will be gained from having good local examples and that there should be regular liaison between users and landholders (as there was with local committees under the Walkways Commission). However, some submitters with landholding interests feel this approach is too time consuming. Overall, some submitters think individual landholders willing to allow access should negotiate on their own terms, but others consider there must be some external arbiter, that is, an access agency, and negotiating access cannot be left up to a particular landholder's opinion. If either party refuses to negotiate that should leave open the option for a decision to be made without that party's involvement.

Some submitters think that any new access arrangements must be made by negotiation and agreement and include compensation if land is taken or utilised. Further, there should be no additional responsibilities for landholders. One submitter wants compensation to be in the form of environmental subsidies to foster sustainable agricultural practices, for example, "catchment and erosion management, nutrient budgeting, farm forestry".

A number of submitters want dispute mediation to be provided. In particular, a mechanism is sought to challenge unreasonable denial of access.

> Where negotiation to cross private land to get to public land breaks down there must be provision for an independent third party to resolve the disagreement.

Some submitters consider that free grazing on unformed legal roads should be used as a bargaining tool in negotiating access, while others consider that, without grazing, many unformed legal roads would be impassable due to weeds.

12.12.3 Legislate

Others want the ability to force legal access in some cases ("if agreement cannot be reached, the rights of the public to access the outdoors of New Zealand shall take precedence") or feel the government should legislate "and be damned", for example, establish a legal marginal strip along and around all waterways. Submitters also want guarantees that arrangements will be binding on future owners. Suggested methods for doing this are:

- having a moveable Queen's Chain, extending coverage (and rate of progress increased) to include all margins of rivers, lakes and seashore;
- exchanging access for nullifying or relocating unformed legal roads, creating a mechanism to facilitate the transfer of unformed legal roads to water margins – some submitters note that, where the negotiation includes any changes to public road provisions, any new access created should not have lesser rights available to the public than was available on road (this is particularly important to recreational interests seeking access to areas of public land with vehicles, guns and/or dogs);
- registering access on land titles;
- enabling perpetual lease arrangements or leasing of existing right of way on exchange;
- using the Public Works Act, purchasing the property rights and bearing all costs (subdivision, fencing, development and valuation and negotiation costs).

12.13 General comments made by submitters on negotiated access

Some submitters make general comments about negotiating access. Some point out that situations vary and require a local, case-by-case approach; others emphasise that negotiations must be voluntary. Some submitters feel there is a need for a better understanding of public use of access before creating blanket rules. There are also submitters who differentiate between restoring old access and obtaining new access.

> Differentiate between public access along margin of significant waterways from public access across private land to get to such margins. Landowner's consent and acquisition of Queen's Chain on subdivision will result, in time, in walking access along margins of significant waterways. But landowners are entitled to unfettered property rights – they can refuse or expect compensation. If intractable, the agency will have to bide time.

Other submitters want any negotiating mechanism to include all forms of access (including hunting and vehicle access) and not to result in the loss of any existing access rights. Some think landholders should

decide which methods are used. A few consider that greater use could be made of existing public land before requiring access over private land, for example, if all unformed legal roads were disclosed to the public, there would be little need to negotiate further access. Some recreationists state they have not had difficulty gaining access when they ask the landholder for permission.

Some submitters with landholding interests consider that their desire for security and privacy is worth more than financial incentives or compensation, while others consider that, whatever mechanisms are used, landholders should have no costs from negotiating access. Some local government submitters also state they should not be burdened with any additional costs.

Some submitters point out that considerable costs will be involved in negotiating with landholders and funding the development and maintenance of access.

> Most of these options will incur a cost from someone, so would need to be carefully considered. A nationally contestable fund for voluntary agreements may assist local authorities to provide such negotiated solutions.

> There are currently 16,000 (Māori land) titles with no legal management structure – who will negotiate access? … Without authorised management there can be no collective agreement to access.

A few submitters want the negotiating tools, whatever they might be, to reflect the balance between conservation and recreational use found in the Resource Management Act.

13 Resource Management Act 1991

Questions asked of submitters: Local authorities administer the esplanade reserve and associated provisions of the Resource Management Act. The provision of esplanade reserves and esplanade strips on subdivision is one of the most significant current mechanisms for creating new water margin access (the other process is creating marginal strips on the sale of Crown land). Is this mechanism still appropriate? If not, does the current process for creating esplanade reserves and strips on subdivision need to be changed if access is to be increased?

Do you think the following measures would be appropriate for establishing new access?

- *a review of how well local government has reflected the purpose in section 6 of the Resource Management Act in its decision making, especially in the creation of esplanade reserves;*
- *assistance to local authorities where lack of resources is a barrier either to the creation of esplanade reserves and strips and/or their maintenance (how could assistance be given?);*
- *removal of the requirement to compensate if taking reserves or strips on subdivision into lots over four hectares;*
- *assistance to local authorities to produce "access strategies" to guide applications for resource consent and in proposing road stopping (how could assistance be given?);*
- *provision of more central government guidance via the New Zealand Coastal Policy Statement or a National Policy Statement on access under the Resource Management Act;*
- *change to the local authority discretion to waive or reduce reserve and strip requirements.*

13.1 Key points made in submissions

- About half of submitters responding to the question consider that the esplanade reserve and associated provisions of the Resource Management Act are still appropriate for creating new water margin access. However, some of these submitters consider that, while the mechanisms are appropriate, they are not being utilised.
- Submitters finding the mechanism inappropriate express a range of views: some consider the Resource Management Act flawed because it has not delivered the public access they would like to see; other submitters consider the mechanism flawed because they see it as an attack on property rights; while another view is that it is not the purpose of the Act to establish new access.

- In relation to the measures suggested in the consultation document, submitters' views range widely. In general, some submitters want the Resource Management Act amended to enhance access, while others oppose any amendment that might automatically establish esplanade reserves or strips. Submitters also raise issues in relation to the costs of implementing the measures suggested, and consideration of natural and environmental values and land use.
- Some submitters feel an access agency should take a central role with access issues, and that local government should be relieved of some of these decisions, while others consider locally generated responses are essential.
- A review of how well local government has reflected the purpose of section 6 of the Resource Management Act in its decision making is generally supported by submitters, who consider it may assist with a consistent approach to access. Others consider it would add little value and some would prefer to establish an access agency rather than continue to deal with access issues through local authorities.
- Assistance to local authorities is generally supported by submitters, with a range of views expressed about what such assistance be directed to (for example, compensation, legal costs). However, other submitters question whether lack of funds is a barrier for local authorities. Again, some submitters would prefer to have an access agency rather than centrally assisting local authorities.
- Submitters are divided on the suggestion that the requirement to compensate be removed (if taking reserves or strips on subdivision into lots over four hectares). Those rejecting this suggested measure view any uncompensated taking as theft.
- Submitters generally support giving assistance to local authorities to produce access strategies. Many of these submitters consider that access strategies should be centrally driven; however, others feel it should be assistance only, and that solutions to access issues be locally generated.
- Submitters also generally support the provision of more central government guidance via a National Policy Statement, particularly as one of a number of measures to enhance access. These submitters feel that local authorities need some central government involvement to improve the current situation. Some submitters stress that the involvement should be guidance rather than direction. Again, other submitters consider that, rather than working through local authorities, an access agency should be established.

- Many submitters support changing the local authority discretion to waive or reduce reserve and strip requirements. Most of the submitters supporting this change want local authorities to be obliged to refer to an access agency or a public consultation process before waiving or reducing reserve or strip requirements. However, some submitters consider that local authorities should retain this control, as flexibility may enhance access.

13.2 Is this mechanism still appropriate?

Relatively few submitters responded to this question compared to others asked in the consultation document. Of those who did, about half consider the esplanade reserve and associated provisions of the Resource Management Act are still appropriate for creating new water margin access. However, some of these submitters add that, while the mechanisms are appropriate, they are not being utilised. Other submitters consider the mechanisms are appropriate but are not and should not be the whole answer to improving public access.

> The mechanism would be appropriate if the councils ensure that the access is sought and gained and do not do "deals" with the subdividers to avoid the reserves and strips being designated. The reserves and strips also need to provide access for all types of recreation. The four hectares cut-off provisions put too much emphasis on avoiding costs to land subdividers and not enough on the desired outcome, protection of public access or effort to develop suitable alternatives during the subdivision processes.

Other submitters consider the mechanism flawed because it has not delivered the public access they would like to see. They consider it to be cumbersome, arbitrary, slow and resulting in small, fragmented and unused access. It also restricts the type of access, particularly with respect to motorised, mountain bike and horse access.

In contrast, other submitters consider the mechanism flawed because they view esplanade reserves and strips as theft:

> They should be abolished. Freehold titles should not be devalued because people want access on private property. Remove Clauses 237E & 237F which specifically define that no payment required if subdivided land is under four hectares.

Some of these submitters want any amendments to the Resource Management Act to incorporate "fair and full" compensation for land taken for esplanade reserves.

> The fundamental change we want to the Resource Management Act is to oblige councils to pay compensation for the taking of rights in the public interest.

These submitters also consider that using section 6 to create new access is at odds with the Panel's stated intent of negotiated and/or compensated additional access.

Some submitters strongly oppose amending the Resource Management Act to allow local government restrictions on land use because of public access, which they feel should be carried out by voluntary negotiation only.

> Use voluntary agreement only. Money is a very good temptation to most people. But if they don't get tempted, so what? Wait for the next owner. No-one lives forever. Why is there a hurry? Inheritors usually want the money. Government will probably be around after the owner's departure.

Others consider that automatic taking is flawed as it creates access where it is dangerous or of no recreational value.

13.3 Measures for establishing new access in relation to the Resource Management Act

Submitters' comments on the options suggested in the consultation document are presented below. Some submitters (but few landholders) support all the suggested options, while a small number support none of the options. Note that several submitters comment on the confusing wording of the questions and/or options, and it was clear that some submitters inferred contrary meanings from the questions/options.

13.3.1 A review of how well local government has reflected the purpose in section 6 of the Resource Management Act in its decision making

This option has support from some submitters drawn from across interest groups, with relatively few submitters specifically opposed.

Submitters (including some local government submitters) think a review would be useful (and would have been useful for this consultation). Such a review could provide information on existing access, showing which areas were created after the Resource Management Act and what needs to be done. Submitters feel there is a need to map esplanade reserves, and identify where recreational value is, focusing on linking accessways. A review may also assist with a consistent approach, and would inform whoever is leading access issues. One submitter considers that a review should be done by local access groups.

> May be helpful: look at how often local authorities waive/reduce requirements; whether local authorities see the strips etc as unwanted land they are obliged to manage.

> [It is] preferable that local authorities provide information within 12 months in a standard format, on the current extent of practical access in their districts and actions taken to address gaps with clear delineation of priorities. Access agency to provide information to Parliament to scope resources.

Some submitters question whether a review would lead to better access, and would prefer to establish an access agency rather than try to resolve access issues through local authorities.

Those opposed to a review (including some local government submitters) consider it would add little value.

13.3.2 Assistance to local authorities where lack of resources is a barrier

Assistance to local authorities is supported by submitters across interest groups, with very few submitters opposing this option.

Many submitters agreeing with this option comment on the lack of funds that local authorities have, particularly in relation to paying compensation to landholders (although it is pointed out by several submitters that this would not be necessary if strips became marginal strips under the Conservation Act 1987). Some submitters think the assistance should be in the form of money from central government, and it is also suggested that a tax on international tourists could contribute; other submitters support this option, with some cap on the level of assistance. Other suggestions are that this issue be considered after a review of local authority performance and that funds be applied for from a contestable fund, or that a funding formula, as described below, be used.

> Funding to be distributed to councils based on a formula agreed to following meaningful discussions with local government. The formula could be based on a range of factors such as permanent population, visitor population, extent of coastline and water body margin where access is desirable (as determined through priorities set in access strategies) etc.

Some submitters specify that the assistance should be for compensating landholders; others that it should be for legal costs, or valuation or surveying costs. Submitters vary in their views about whether signs, information and maintenance should be paid for centrally. One submitter points out that fencing should not be carried out unless it is necessary.

A few submitters offer suggestions for funding formulas.

> Distribute funding to councils based on formula; develop in consultation with councils based on permanent population, visitor population, extent of coastline and water body margins where access desired etc.

Some submitters consider that, rather than centrally assisting local authorities, it would be better for an adequately funded central agency to directly take responsibility, or via a trust.

> Once the summary review is undertaken … the access agency could consider issues of resources. It may not always be appropriate to support local authorities to undertake these tasks, given that in a number of cases the issue is of low priority. In some cases it may be better addressed by directly taking responsibility

> and adequately funding a response by central government. A central fund administered by the access agency might be made available. A similar approach has been adopted in the provision of funds to undertake biodiversity activities on behalf of central government.

> [Fund] via a tracks and trails trust. Too many councils take the money rather than wanting the responsibility of administering more public land.

Other submitters question whether it is lack of money that prevents local authorities from implementing the current process for creating esplanade reserves and strips on subdivision. A local government submitter also questions this.

> I am not aware of any lack of resource issues as the reserves/strips are created through subdivisions by developers. Esplanade reserves are vested and are to be administered by territorial authorities. There is nothing in the legislation that appears to imply that they are required to be maintained. That is, the esplanade reserve/strip is an instrument created in itself to achieve a number of purposes.

13.3.3 Removal of the requirement to compensate if taking reserve or strip on subdivision into lots over four hectares

Submitters are divided on this option. Generally, but not entirely, those who oppose it are landholders, while those who support it are recreationists.

Submitters rejecting this option view any uncompensated taking of land as theft.

> To direct local authorities to not compensate landowners for taking private property is unacceptable and it is difficult to understand that the committee would even contemplate asking.

Some submitters can see benefits for local authorities and the public, but also consider it problematic and/or unfair to landholders.

Other submitters support this option (many without providing additional comment).

> There should be no compensation! The land cannot be removed!! It is still there!! No one else can build on it. The esplanade reserve/strip should allow foot access only. Why should landowners see the creation of a marginal strip as a money tree?? Compensation will only create a bureaucratic nightmare and more headaches. Many of our lake margins currently have esplanade reserves as a result of subdivision without any hassles from the property owners or the public. No compensation was given then … Why start compensating now?

Some submitters differentiate between reserves and strips (and a few submitters question whether the question was correctly worded and was intended to refer to strips only).

> Allow for councils to establish an esplanade strip without compensation on lots over four hectares. Do not allow esplanade reserve to be taken without compensation – this allows the landowner to retain title of land while achieving access.

> The esplanade strip provisions in the Resource Management Act allow the landowner to retain the title of the land, while achieving access. [We] do not support the use of the esplanade reserve provisions for subdivision of lots over four hectares, due to the change in land ownership that this involves.

13.3.4 Assistance to local authorities to produce "access strategies" to guide applications for resource consent and in proposing road stopping

A number of submitters (across interest groups) support this option, with some seeing strategies as a priority. Few submitters specifically reject this idea.

Guidelines, document templates, technical help and assistance with prioritisation are all suggested as means of assistance. It is also suggested that a consultation group should identify areas where access is required to establish priorities, or that the Ministry for the Environment or DOC could make a declaration on access with which local authorities would conform. Submitters welcome the availability of consistent information about processes such as resource consents and stopping roads.

> There is very little information available on this. Try asking a local council on the process for objecting to a road stopping – in most cases the desk staff have no idea. Some good written material would be really useful.

Many submitters supporting this option consider that the access strategy(ies) should be centrally driven. However, others specify that assistance only should be provided to local authorities, and access strategies and solutions should be locally generated. Some submitters are concerned that local authorities do not abdicate their responsibilities regarding access, and that they should be required to produce access strategies.

Other submitters are concerned that, if the public insist on local authorities fulfilling their access-related responsibilities, unformed legal roads will be stopped. (A number of submitters note their objections to unformed legal roads being stopped.) Because of this risk, an access agency is required.

> If people insist on them fulfilling obligations re public rds they will be tempted to stop them. If done with access agency then overall plan will decree sensibly what rds can be stopped.

A few submitters were sceptical about the effectiveness of strategies in improving access.

> I'm sceptical about this one – it just sounds like more bureaucracy which might cost a lot with no guarantee of any useful outcomes.

> We would oppose "access strategies". These have been produced over the last 30–40 years by agencies, such as the former Ministry of Works, and they have not worked, as there is no obligation on district councils to fulfil their statutory obligations.

13.3.5 Provision of more central government guidance via the New Zealand Coastal Policy Statement or a National Policy Statement

A number of submitters (across interest groups) support this option. Few submitters specifically reject this idea.

Submitters supporting this option consider that central government must become involved in access issues or local authorities will not act. Some submitters suggest what such a policy should contain.

> District councils are not applying the public access provisions of the Resource Management Act consistently. A National Policy Statement and amendments to the New Zealand Coastal Policy Statement are required to make it very clear to district councils that they must implement the access provisions of the Resource Management Act, and to limit the local authority discretion to waive or reduce reserve and strip requirements.

> A National Policy Statement should require all councils to include in their district plans policies which provide for improving public access to coasts and waterways such as through conditions of subdivision, legal roads and/or acquisition.

Some submitters express diffidence about National Policy Statements. These submitters are concerned about the effectiveness of such statements and consider that the implementation of policies needs to be very well thought out. Others think National Policy Statements are desirable but will not be sufficient to improve access.

> A National Policy Statement on how to provide for section 6(d) of the Act could be undertaken by the access agency as a priority matter. Note, however, that this would cause necessary amendment to district plans, which might not come into effect for up to 3–5 years after its being promulgated. It would be desirable, but not in itself sufficient.

Guidance, rather than direction, is stressed by some of these submitters, particularly those who want access issues to be resolved locally.

> National GUIDANCE – not national direction. Guidance in consultation with councils. No need for national direction on access through National Policy Statements. Access better addressed at local level to meet needs and preferences of local communities, with input from national. A National Policy Statement would be too high level and vague. (emphasis in the original)

Rather than having National Policy Statements, some submitters consider that an access agency should be established. For some, this is because establishing new access is not the purpose of the Resource Management Act and therefore a National Policy Statement on access under the Resource Management Act is not an appropriate measure. Other submitters think National Policy Statements add little to the

guidance provided in various acts or are plainly pointless, while other submitters think there should be no further onus on local authorities.

> Once again … establish an access agency!! Government guidance??? Has not worked in the past, why should it work in the future?

A small number of submitters consider National Policy Statements a waste of time and money, with costs outweighing benefits.

13.3.6 Change to the local authority discretion to waive or reduce reserve and strip requirements

Changing local authority discretion to waive or reduce reserve and strip requirements is supported by a number of submitters across interest groups. However, the wording of the question caused some confusion for submitters and some submitters disagree with this option for the same reasons as others agreed.

Most of the submitters supporting this change want local authorities to be obliged to refer to an access agency or a public submissions process before waiving or reducing reserve or strip requirements. Some (including local government submitters) feel the option to waive or reduce should be very limited or not exist at all, or that local authorities should have the ability to reduce but not waive esplanade reserves.

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

> If for some reason local authorities would like to waive or reduce reserve or strip requirements this must be open to public scrutiny and be treated as a non-complying activity status (or similar).

It is variously suggested by submitters that a marginal strip/reserve should be required:

- on all property adjacent to a waterway;
- on all land sales involving properties over a certain size and all overseas land sales;
- when other consents are sought or if land is adjacent to a significant waterway;
- anywhere access will be created to waterways, mountains, etc – not necessarily significant ones.

Other suggestions are:

- accessways should be split off all land bounding fishable rivers and public lands when sold;

- access strips should be considered as a part of possible development impact levies on activities other than subdivision in relation to land use change;
- access should be created to ranges, forests, etc where it will create better access than slogging up riverbeds;
- the four-hectare limit should be removed.

One submitter notes that some right of appeal may be needed in the case of very narrow properties.

However, other submitters feel that obliging councils to take reserves on every subdivision (or sale of land) risks large areas of land having weed and pest problems.

Some submitters objecting to the suggestion to change local authorities' discretion did so because they inferred the option would enable local authorities to waive/reduce reserves or strips at will.

Other submitters comment on strips having too many constraints, and consider that they should be replaced with reserves. Some submitters differentiate between the size of lots being subdivided.

> The provision of esplanade reserves should be compulsory when lots of less than four hectares are subdivided alongside "significant waters". The provision of esplanade strips should be compulsory when lots of greater than four hectares are subdivided alongside "significant waters".

Few submitters specifically reject the option of changing local authority discretion. Of those who do and provide comment, it is generally considered that local authorities have a better understanding of local needs, and thus should retain this level of control, particularly when some flexibility may enhance access.

> In negotiations with landowners at subdivision, the option exists to waive or reduce esplanade reserves along waterways not regarded as significant, and instead to require a reserves contribution. Contributions could be used for the establishment of riverbank walking tracks along significant waterways.

13.4 General comments made by submitters on the Resource Management Act

Some submitters made general comments, rather than specifically supporting or rejecting any options.

One view expressed by submitters is that the Resource Management Act is a barrier to landholders co-operating with people wanting access, and that goodwill disappears when compulsion is introduced. Submitters feel the options suggested represent greater regulation and will have a further negative impact on property rights.

Some submitters want to amend the Resource Management Act (and other legislation) to provide for the designation of public use

requirements over private land – "to serve notice of an intention that must be recognised (and financially allowed for) in the purchase of that private land by a new owner". It is also suggested that, whenever land changes title, it should automatically return the margin access to the Crown for the benefit of everyone (with compensation).

> Legislate for access; improve the trigger mechanisms for improvements to the Queen's Chain (marginal strips and esplanade reserves) and public access under any existing or future applicable legislation such as the Overseas Investment Act and the Resource Management Act.

Other submitters oppose any amendment.

> [We] oppose amendments to the Resource Management Act that automatically establish esplanade strips over Māori land or general land held by Māori; [we are] concerned that unmanaged strips will increase pests and disease and create extra costs for landowners; reserves should not be taken on uncompensated basis; any legislation in relation to privately held land will be seen as breach of the Treaty; we agree with discretion to waive reserves and strip requirements across Māori land and land held by Māori.

Some submitters consider that the Resource Management Act is not a tool for procuring access.

> We are opposed to the use of the Resource Management Act 1991 to improve access as: it constrains property rights in the public interest without compensation, it can result in competing demands, e.g. conservation versus recreational values (access to rivers and streams that have large indigenous riparian margins will result in the need for tracks through these areas, consequently destroying these indigenous margins), it imposes costs on landowners through the Resource Management Act process, e.g. hearings.

A submitter with industry interests is concerned that consideration be given to the future use of the land and whether that use is compatible with general public access.

> Where the future land use is the same or similar to its past use, the exemption provided under the Conservation Act should also serve to exempt the land from the esplanade strip requirement under the Resource Management Act.

Others also question the concept that a reserve strip can both protect a waterway and be open to public access.

Another issue for submitters is the cost of implementing changes. Some feel that the costs outweigh benefits. For some submitters, the issue is not of sufficient importance to need central policies. Others feel local government is making adequate provision for access, or that local authorities should be able to contact an access agency for advice on these issues. However, some submitters feel that rural local authorities lack the political will to enhance public access and an access agency should take a central role with access issues.

Other comments from submitters are:

- health and safety legislation and overseas buyers of land are degrading New Zealand's (access) culture;
- unformed legal roads should not be stopped without proper investigation or should only be swapped for access to public land;
- the Government should be tougher on developers;
- the width of strips should be considered – some consider that 20 metres is unnecessarily wide in cases, while others think is not enough and local authorities should be able to take more without compensation, or allow esplanade boundaries to be moved inland:

  A chain (20.1168 metres) in most cases is far more than is necessary to provide walking access. The land would need to be clearly identified as being under the control of a specific body (ownership).

14 Access to water margins and other public land

Question asked of submitters: How could access across private land to water margin reserves and to other public land be improved?

Possibilities include:

- *voluntary agreement on a case-by-case basis between landholders and walkers;*
- *an arrangement whereby landholders agree for the land to be protected or covenanted in a manner similar to that provided for in the Queen Elizabeth the Second National Trust Act 1977;*
- *the establishment of access strips by local authorities;*
- *the use of unformed legal roads;*
- *other (please describe).*

14.1 Key points made in submissions

- Submitters making general comments on access to water margins and other public land consider that each situation may require a different method of resolution. Many of these submitters want access to be enduring and moveable, if necessary. Other submitters emphasise property rights, and particularly the importance of landholders being able to restrict access on private property.
- Some submitters (but relatively few landholders) support all of the options suggested, depending on circumstances.
- Voluntary agreement on a case-by-case basis is supported by many of the submitters identifying as landholders (who generally support only voluntary agreement). However, voluntary agreement also has some support from other submitters, many of whom suggest that a systematic approach is required to prioritise access requirements prior to negotiating with landholders and that agreements be negotiated between landholders and an access agency. Submitters opposing voluntary agreement feel it offers no improvement on the status quo.
- Submitters across interest groups support the idea that access be protected by a covenant agreed by landholders, particularly as one among a mix of methods. Several submitters suggest that an access agency administers the covenants. However, there is some confusion among submitters as to how a covenant operates.
- The establishment of access strips by local authorities has a moderate level of support (particularly as one among a mix of

methods), largely from submitters with recreational interests. Some (but not all) submitters feel this is an acceptable option if achieved through subdivision or land sales, and if it does not involve compulsion.

- The use of unformed roads is supported by some submitters, including some landholders, under certain conditions. It is generally acknowledged by submitters that, although unformed legal roads are legal roads freely available to the public, a number of problems complicate this issue. Some submitters think that unformed legal roads should be realigned if necessary to provide usable access, while other submitters are concerned that such arrangements do not trade away any access rights.
- Submitters also make other suggestions to enhance access to water margins and other public land, ranging from introducing new legislation to implementing existing legislation and using methods other than legislation, such as supporting community groups already involved in negotiating access.

  Many submitters consider that each situation might require a different method of resolution, and that all or none of those suggested might be applicable. Some submitters (but relatively few landholders) support all of the options suggested, depending on circumstances.

14.2 Voluntary agreement on a case-by-case basis

Many of the submitters identifying as landholders support this option (and generally only this option), but it also has some support from other submitters. Some submitters suggest that the agreements be negotiated between landholders and an access agency, and others that landholders also need a body to negotiate on their behalf (to avoid time-consuming involvement with numerous parties).

Submitters supporting this option also think a systematic approach is required to prioritise access requirements prior to negotiating with landholders.

> Walkers and their organisations could identify priority areas as part of a process to ensure that priority areas are addressed first, but it should be the responsibility of the access agency or the responsible public agency to establish their priorities in accordance with the initial review and the aim and principles for access, then undertake negotiation with landowners. It is essential that an appropriately skilled person, with all the relevant information, undertakes the negotiations on behalf of the public. In most cases it would be expected that agreement satisfactory to both parties could be achieved. Where no satisfactory arrangement can be made, this needs to be recorded and a decision made as to whether the matter should be taken further, to a dispute resolution process as discussed above.

One submitter notes that this is the only approach that will build relationships between rural landholders and urban access users.

> Access should only be improved by voluntary agreement on a case-by-case basis between landowners and walkers. Any other method will only serve to increase the widening gap between urban and rural. Expectations and attitudes of the public towards access over land have changed over later years. What was once a privilege is beginning to be seen by the public as a right … The only way to bridge this gap is voluntary agreement over types of access and accountability. Outcomes will vary, in some circumstances there may end up being unlimited access over an accessway and in others it may be access on a permission basis from the appropriate landowner.

Those submitters opposing voluntary agreement feel it offers no improvement on the status quo, and is susceptible to landholders' whims and to changes in access arrangements when land is sold.

14.3 Landholders agreeing that access be protected by covenant

Submitters across interest groups support the idea that access be protected by a covenant agreed by landholders, particularly as one among a mix of methods. Few submitters specifically reject it. Several submitters suggest that an access agency administers the covenants.

However, there is some confusion among submitters as to how a covenant operates. Some submitters support it if it means the public has continuous freedom of access and future owners must abide by it. In addition, others support this option because it would achieve the certain and enduring aspects of the access principles, while others oppose the suggestion because they consider that covenants are (potentially) not certain or enduring and thus fail to give the level of protection desired.

14.4 Access strips established by local authorities

The establishment of access strips by local authorities has a moderate level of support (particularly as one among a mix of methods), largely from submitters with recreational interests.

Some submitters feel this is an acceptable option if achieved through subdivision or land sales, and if it does not involve compulsion and – as some suggest – landholders are compensated. Others suggest that legislation be amended to allow for access through subdivision to apply to all land, irrespective of lot size.

A few submitters supporting this suggestion think these access strips need not necessarily be administered by local authorities.

> [This option has] a role, as does the agency managing the public land in question. For example, Department of Conservation should be active where it is access to Department of Conservation administered reserves. A local council should have a

> role where it is the administering body. I would also like to see the access agency take a lead in this.

Submitters express a range of reasons for objecting to this suggestion. Some consider that local authorities have difficulties managing the access strips they are responsible for now, without adding to their responsibilities (or local rates). Some consider that this method of gaining access would antagonise landholders and result in resistance to granting public access in other situations.

14.5 The use of unformed legal roads

The use of unformed roads is supported by a number of submitters, including some landholders, under certain conditions. This option elicited the most comment from submitters. (Unformed legal roads are discussed further in section 16.)

Some submitters feel the use of unformed legal roads should not have been included as a means of gaining access, as unformed legal roads are public land (roads) and access users are not required to request permission. However, it is generally acknowledged by submitters that a number of problems complicate this issue, namely that the whereabouts of unformed legal roads may not be well known, that they may lead to nowhere of recreational value, that they may be dangerous, or that they may be in the midst of farming operations. Several submitters consider that rationalisation of unformed legal roads is required.

> [We are] aware of the reluctance to make public the existence of unformed legal roads. However they provide a logical alternative to confiscating private land for greater access. A full rationalisation of unformed legal roads and the issues surrounding them is well overdue.

Other submitters think unformed legal roads should be abolished.

> Unformed roads should be abolished as they are an anomaly … which has never been addressed. Yes landowners have the use of the land but who else was going to look after these areas. Landowners have often found it necessary to start managing these areas to stop spread of pests, e.g. blackberry, gorse, ragwort, etc onto their own land. These roads are often in totally unsuitable places and will not serve the purpose they were designed for. I suggest they need such a major revision and overhaul that scrapping of them altogether would be the most sensible option in most cases. New roads get built where they are needed not where a surveyor thought they should go 100 years ago.

A number of submitters think that unformed legal roads should be realigned if necessary to provide usable access. This may involve a land swap with landholders, and possibly disposing of unformed legal roads that are not required.

> A formal exchange of land offsetting the unformed legal road with provision of access strips would improve the current situation for both landowner and those wanting access.

However, other submitters are concerned that such arrangements do not trade away any access rights, as unformed legal roads allow the same passage as formed legal roads (for example, access for vehicles, or hunters with dogs and firearms).

> Consideration could be given as to how public roads are identified and whether these could be mobile, while retaining public rights.

> It is important that the rights and opportunities to use these are not "traded away" in negotiations. The resulting "accessway" must be of a suitable standard. (And may be of a vehicular standard if appropriate.)

Landholders do not want to be adversely affected by access seekers using unformed legal roads.

> We have an unformed legal road in place to riverbank which people can use, but don't want people camping at riverbank (on our title) or walking through paddocks or round our home or sheds. We feel while we have management control of area, can request anyone to clean up and move on.

> [We] expect the access agency or local authorities to take steps to ensure public access did not adversely affect the adjacent landowner, before publicising the availability of access along that unformed legal road (clear and visible signage, accurate mapping and provision of facilities where necessary).

14.6 Other suggestions

Some submitters think that access should be achieved through new legislation (deeming access, re-introducing the Walkways Commission and Act), while others think access could be enhanced by implementing existing legislation (including using the Public Works Act if the value of having public access outweighs private ownership of the land).

> Any solution must in my view give the landowner a choice, either to agree to unapproved access along, say, a poled route, or face compulsory acquisition and construction of a fenced right-of-way with unlocked gates for stock etc access. It's no good continuing to beat around the bush, in appearing to accept in principle that pre-obtained permission might be acceptable as part of a solution. It is not, and everything else must be geared to absolutely no compromise on this point.

Other submitters suggest that less definite methods than legislation may also be useful, such as supporting community groups already involved in negotiating access. Several submitters emphasise that the focus of efforts to enhance access should be on negotiating in good faith with landholders. Another suggestion is to levy landholders who are unwilling to grant access for their use of public water.

> A new proposition: Landowner charged to have the sole use of the public's water. This charge to the landowner should be only incurred by a landholder who unfairly withholds public access to water margins next to public waterways.

> Could easily be imposed by the Access Conciliator and be at the choice of the landowner whether he pays to exclude the public from the margins next to the public water ways. Be careful this is not the beginning of water access levys which of course is unacceptable. People love turning a levy into a revenue earning industry. These charges could be used to run the Access Conciliator, and fund any action he sees as fair for rectifying and improving the public access.

14.7 General comments made by submitters on access to water margins and other public land

Submitters also make general comments on access to water margins and other public land, rather than specifically commenting on the options suggested. Some submitters focus on the outcomes they want to see rather than the methods used, for example, that all new legal access should move with changes in water margins. Others reiterate that access should be enduring.

> [We] recommend that all new legal access to water bodies is moveable and not require survey but be suitably registered.

The costs of managing accessways (including surveying) are raised by several submitters, who note that local authorities would require funding. While some consider that local authorities should conduct negotiations, others want an access agency to lead.

Some submitters question whether there is a problem that needs resolving. One submitter suggests that a report on unformed legal roads and the Queen's Chain is required from LINZ before deciding how to enhance access.

> This smacks of shadow boxing. Surely a detailed report on the Queen's Chain, paper roads, relevant and other information should be called for from LINZ before wasting time and allowing preconceived ideas to become set in concrete.

Other submitters suggest that a systematic approach is required, with agreed regional access plans developed prior to trying to resolve specific access issues.

One submitter provides examples of the Government (the Army, the Departments of Correction and Conservation) limiting public access, and suggests that the Crown needs to provide leadership to private landholders.

> If your Panel is to convince private landowners of the virtue of providing access then it behoves the Crown to provide exemplary leadership from the beginning.

Another submitter considers new access to be detrimental to rural landholders.

> New access is a decided swing against rural landowners in favour of those who for whatever reason have not invested in rural land. Rural landowners should not be paying for this change, either directly or as the principal funders of rural territorial authorities through land based rating.

Some submitters consider that there is undue emphasis on access to water margins (as opposed to all public land).

> The emphasis on waterways implies a strong Fish & Game component in the drive for public access. You need to examine unformed legal roads and formed road network before charging off to open access to private land.

Some submitters ask that environmental values be considered. Several consider that, to minimise damage, there should be walking access only on water margins. Others consider that any access arrangement must include any form of public access (for example, vehicles, hunters with dogs and firearms).

A number of submitters emphasise private property rights, or state that the ability to restrict access is paramount. One submitter notes that any guaranteed access must involve renting or purchasing the land.

> I currently give access across our farm to more than 10 regulars – I can vet them in a case-by-case way. Any form of guaranteed access would have to involve purchase or rental, fencing and management – negotiate openly.

15 Priorities

Questions asked of submitters: The provision of new access opportunities and rationalisation of existing access will generally need to be done on a case-by-case basis and will be time consuming and costly. Resources will need to be prioritised. What are the priorities to be addressed first? Who should provide the funding for new access and to what level? To what extent can your organisation assist in setting priorities?

15.1 Key points made in submissions

- Many submitters, largely those with recreational interests, think the priorities are establishing an access agency (or commissioner for public access) with local representation, developing a national database of public access, and identifying and prioritising access issues. Some submitters, including landholders, consider that existing public access (for example, DOC estate, unformed legal roads) should be identified and established before addressing any other issues. A number of submitters with landholding interests want property rights to be affirmed as a priority.
- Most submitters (across interest groups) think that funding for new access should come from central government (or an access agency). Some submitters specify the funding should be from taxation. Other submitters suggest a mixture of funding sources, such as local authorities and central government. Few submitters think that local authorities alone should fund new access. Some submitters with landholding interests think users should pay for new access.
- Very few submitters suggest a level of funding. Of those who do, the range is from $1 million to $100 million per year.
- Recreational clubs can provide extensive local knowledge of access issues to help set priorities. Local authorities have consultation and planning resources available; some have already carried out extensive research on public access. Submitters are also interested in providing policy input and having representation, particularly locally but, for some, nationally.

15.2 Priorities to be addressed first

15.2.1 An access agency

Establishing an access agency (and local representation) is a priority for many submitters with recreational interests (and a few landholders). Some of these submitters consider that there are a number of immediate tasks for the agency.

> Establish 1) a public commissioner for public access, 2) a significant and contestable public access enhancement fund, 3) show public access on topographical maps as well as public land boundaries, 4) give greater recognition to unformed legal roads and their use for public access, 5) relocate the Queen's Chain to restore its public access purpose where it has moved.

> Establish an agency; establish a funding base; define access types; establish a code of conduct; form negotiated access contracts; establish disputes procedure; provide accurate publicity; define routes and sign; negotiate conditions on selected current access routes …

> The prioritisation of access issues and responses is a matter that we contemplate being undertaken by the proposed statutory Trust, with the benefit of reasonable consultation. These priorities may evolve over time, but in the early stages would certainly feature clarification of existing rights and ensuring that the existing public lands (as conservation estate) are available.

Note that, although other submitters do not state that an agency should be formed as a priority, many of the priorities listed by them presuppose that a body exists to carry out the work they suggest.

15.2.2 Information

Researching and consolidating information is considered a priority by a number of submitters, particularly recreationists. This includes establishing a database of and mapping public access, and reviewing places where access is required. Identifying and mapping unformed legal roads, in particular, takes priority for some submitters. It is suggested that this identification be done locally. Information on all parties' rights and responsibilities (including a code of conduct) is also considered important, as is where to obtain access information.

> Start with information on public access: one's rights and a point to access the information, then a commissioner, then signage where necessary.

> An obvious first step is the identification of access by local authorities to a standard format developed by the access agency as described above. At the same time, interested parties could be encouraged to identify access "hot spots" or deficiencies and priorities for action in each local authority area. When these two sets of information are analysed, priorities can readily be developed. The results of this work should be a matter of public record.

Landholders and local government submitters want to see reviews of what access exists now and what access is wanted, prior to developing strategies for improving access and formulas for negotiating access.

> Without understanding where current access is available or more importantly not available it is illogical to begin looking at increasing access, when we don't even know the breadth of the problem.

> Review what areas the public wants access to (they need to make submissions, not be told what access they may have now otherwise this would result in the wrong drivers) and the areas that have access in place but not wanted should be deleted. Then move onto an assessment of whether access is necessary from a public

> good viewpoint to the areas highlighted. Then negotiate areas, terms/fencing compensation, legal liability and ongoing monitoring.

15.2.3 Prioritising access situations

Some submitters comment on which access situations to prioritise. A number of these submitters think most value will be gained by dealing with the easiest cases first.

> Prioritise by dealing with the cases which will likely be easy to find agreement on first. If they have positive outcomes for all parties then it will bear well for the more controversial situations.

Other submitters think that situations where there is conflict should be addressed first, while others think that the areas of highest demand need the most immediate attention. Submitters also suggest that priority be given to areas where there is a significant public resource (such as a lake) or where there is a real (rather than potential) public need. One submitter considers that the simplest method for determining priority is to allocate a budget for the negotiated purchase of rights of public access.

Establishing existing access is important to submitters across interest groups. In particular, submitters are concerned that full access to the DOC estate and to unformed legal roads is available.

> The first priority should be ensuring that opportunities already available on public land … be more user friendly and fully utilised. Any new access should then only be established whilst protecting the interests of landowners through a process of voluntary negotiation in good faith providing full and fair compensation.

The priority for some submitters relates to gaining access to particular areas. This includes access to:

- (and along) waterways and public land;
- areas poorly served by access or anywhere there is no access to public land;
- areas near large urban populations;
- the foreshore and beaches;
- forest parks and national parks;
- fishing rivers (addressing exclusive capture of rivers and streams is a priority for some recreationist submitters):

> Addressing the private capture of our backcountry rivers and streams would be the biggest priority as we see it! Much of this water, currently being denied, is public! Identifying, then tackling, these issues will send out a very clear message to all others that it is not acceptable for those intending to make a business out of capturing our backcountry waters, then selling off the fishing/access rights. This entire access issue was initiated because of the private capture of our backcountry rivers and streams. Many of the ongoing concerns over the years relate to this.

> Once this entire private capture situation has been quashed, we believe many of the other problems regarding access will dissipate. We consider this needs to be followed up, and sorted out as a priority!

Although some submitters agree that enhancing access is best achieved case by case, others consider this approach too slow.

> Case by case. Is that the 500 year plan? Priority 1: Make formula of access required on land, sea or river, i.e. 100 metre perimeter for foot access on public land. Vehicle access/parking every five kilometres of public land. 2: Identify areas of interest/relevance. 3: Make a law. 4: Do it. Then it's done. Two years tops.

Other submitters consider that there are no priorities, but rather the status quo should be retained. Some of these submitters consider that existing mechanisms are sufficient, and that occasional issues can be resolved at a local level, and others consider that there is no public pressure to alter current arrangements.

15.2.4 Legislation

A few submitters suggest that implementing existing legislation would achieve enhanced access, while a small number of submitters consider that new legislation to enhance access is the most immediate priority. Other submitters think that legislation is unlikely to provide an instantaneous solution to access issues.

> Priority should be implementing existing legislation and use of public lands, i.e. paper roads. These rights already exist; completing this exercise would ensure significant improvement and should be enshrined during this period of government.

> Change the Resource Management Act, legalise the Queen's Chain, mapping, establish an access commission, marginal strips, esplanade reserves and unformed legal roads should be moveable.

15.2.5 Budget

Providing a budget with which to address access issues is considered a priority by a few submitters, including those who think access across private land needs to be purchased. Some of the submitters concerned with funding question who will provide the money.

15.2.6 Principles

Some submitters think that the principles on which public access is founded need to be very clearly established before any action is taken.

15.2.7 Property rights

Finally, a number of submitters with landholding interests would like to see the affirmation of private property rights prioritised. Many of these submitters consider that this could be achieved through the process used to enhance access.

> Whether nationally important water bodies or significant waterways are addressed sooner rather than later is essentially immaterial – the priority is protecting the interests of landowners through a process of voluntary negotiation in good faith providing full and fair compensation.

15.3 Funding for new access

Most submitters (across interest groups) think that funding for new access should come from central government and/or general taxation. (This includes those submitters who specify that funding should come from an access agency or from a public access fund.)

Many of the submitters who support the funding coming from central government, particularly recreationists, consider that access is a public good that should be publicly funded. Some submitters consider that the funding should come from particular government departmental budgets, such as Health and Tourism and particularly Conservation. There are also submitters who consider that governments over previous decades have allowed access to be eroded, and thus have a responsibility to fund new access.

> Who pays for it currently under tenure review? We have had 50 years of paying for bad access laws in non monetary ways, such as restricted access. The government took upon itself 50 years ago to give away access to the NZ public in favour of effectively increased privatisation of public assets. Presumably the government benefited from that financially? No, I know they haven't. But certainly I see it as the responsibility of government through one agency or another to pay for reinstituting that public right.

A few submitters who think central government should fund new access specify that the funding should come from a tax on tourism or on international tourists.

> Reintroduce the idea of a $10 tax for tourists on entering NZ to then be redistributed to the access agency.

Many of the submitters with landholding and industrial interests support central government funding new access because they do not want to bear the costs either directly or through rates.

> Funding for new access ought to come from the Government on behalf of all New Zealanders or those communities demanding new accessways. Landowners should in no way be expected to contribute funding towards an effort that diminishes their private property rights.

Some acknowledge that they would bear the costs indirectly through taxation though.

While it is generally accepted that private landholders should not bear the costs of providing access (except when subdividing land), it is also pointed out by submitters that the public should not bear the costs of managing unreasonable landholders' activities, that is, removing obstructions on unformed legal roads.

> Private landowners should not bear costs of providing access, but nor should they be able to "capture" or deny access to the public. Even simple things like failing to identify public roads on gates (as required by law) or establishment of new fences can have the effect of denying public access. The public should not bear the costs of rectifying difficulties made by landowners.

A mix of funding providers is considered most appropriate by some submitters, for example, access users (including international tourists), central government, and local authorities, community groups and trusts (although one submitter notes that the Health and Safety in Employment Act 1992 is inhibiting agencies' use of willing volunteers). Some of these submitters suggest that particular costs be met by various parties (for example, surveying to be funded centrally, but signs and information locally) or that new access derived from subdivision be entirely funded by the developer, but new access on an existing title be funded by central government. It is also suggested that a central agency funds the establishment of access but that DOC or the authority having jurisdiction funds the ongoing management.

> In many situations, the access agency may find it difficult to persuade local authorities to prioritise and fund the building of foot tracks. Perhaps there might be scope for fifty-fifty funding, half the cost of establishing new tracks to be borne by the access agency, half to come from the local authorities or trusts or other sources. An alternative approach would be for the access agency to pay the cost of negotiating and building a new track, provided that the local authority or Department of Conservation agreed beforehand to manage and maintain the track. We are used to the idea of boardwalked and foot-bridged tracks through native bush, phenomenally expensive to build and very costly to maintain. Such tracks will always be a part of the national network of tracks. But what is seldom acknowledged is that many tracks can be relatively cheap to establish,… for example, … three or four stiles, two signposts, a few plastic waymarkers and little else.

Other submitters think that the funding will depend on who owns the land, who wants the access and what work is required to develop the accessway. Although submitters acknowledge that local authorities have access responsibilities, many of these submitters accept that there are constraints on local authorities' ability to fund new access. Only a few submitters suggest that local authorities solely meet the cost of new access.

> New access should be funded 100% by subdividers if they are getting multiple titles from their subdivision. If the new access is to go through an existing title, costs should be met by the Government. Local authorities have access obligations under the Resource Management Act and many of the larger urban councils do create access. However, many do not see access as important and fail to fund this activity. Central government through an Access Commission should provide access to contestable funds to the less well off rural councils. We recommend the establishment of a public access fund.

A small number of submitters with landholding interests, including some iwi groups, suggest that users pay for new access.

> Perhaps the NZ Fish & Game Council would contribute to the ongoing management and maintenance of public walking accessways (if they do not do so already)? Māori gave and had confiscated enough last century and the century before so should not be identified as a financial contributor today. We also pay our rates and taxes which contribute to the public purse.

Other submitters also think users should pay for new access but consider this impractical and thus accept that funding will come from multiple sources.

> Users should pay although this will be hard to enforce. A levee on hut fees. Rates and central government taxes should pay the main bulk.

15.3.1 Level of funding

Very few submitters suggest a level of funding. Of those who do, the range is from $1 million to $100 million per year. Several submitters consider $10 million per year "a good start". A few submitters think funding will need to be only "small" or "minimal".

15.4 Organisational help to set priorities

As the question refers to organisations, relatively few submitters responded to this question – in particular, only a small proportion of landholders responded.

Many of the responding submitters represent recreational clubs and offer assistance with local knowledge of access priorities, including areas where there has traditionally been difficulty gaining access or where there is high demand for access. Some submitters offer to identify possible routes, or to prioritise local rivers and lakes needing access, or areas significant to hunters where access is difficult. Some recreational clubs have already documented local access issues.

> We are able to quantify the amount of use particular rivers or lakes receive and the value of waters that are currently inaccessible. We also maintain an access database, which describes the tenure of land alongside water margins.

Local government submitters note they carry out consultation and planning related to access for their district plans and other work areas. Some local authorities have completed extensive research on public access already that could be made available to a central access agency.

> Currently preparing a regional walkways and cycling strategy for [the region] to promote walking and cycling and to identify current and future ways as part of region wide network. This is being prepared with three district councils and Department of Conservation, Federated Farmers, conservation board, Transit NZ [and others]. We have also completed an inventory for [the] coast which may be of interest to the Panel. This involved identifying, mapping and evaluating the location and type of access to coastal areas in [the region].

One local authority submitter notes that a national-level strategy is still required, and that a definition of "significant" is required to establish

priorities. Some local authorities want to be engaged at a national level, while others do not.

> Councils could be involved as a third party making comment on the existing accessways, and any new ones. However, this is not core business for TLAs other than managing unformed roads and some reserve areas. I do not see Councils becoming actively involved other than to make comment and offer advice at this stage.

Other submitters are able to consult their members and co-ordinate feedback on priorities to an access agency. A number of submitters are interested in being part of a local access committee or having representation at national level.

> Our organisation would expect, and appreciate direct access to, or personal representation on the decision making group.

Some submitters are interested in working on policy development or reviewing a code of conduct. A number of landholders offer to assist an access agency to develop a process of voluntary negotiation in good faith and with compensation.

> We wish to help the agency understand what it needs to do – i.e. develop a process of voluntary negotiation in good faith providing full and fair compensation.

A few submitters offer to carry out physical work, such as marking and maintaining walkways. One submitter can assist with publishing information.

> We would be pleased to assist with setting priorities in information policy and with getting access information and guidebooks published accordingly.

16 Unformed legal roads

Background (from the 2003 Reference Group report and from public meetings)
Many submitters with recreational interests wanted to ensure unformed legal roads are known and available for access. Many of these roads do not currently provide access because of difficulties in establishing their precise location, or obstruction by adjacent landholders. Submitters also reported difficulties getting local authorities to enforce public access on these roads.

Questions asked of submitters: If unformed legal roads traversing farm or forest land are marked on maps and/or signposted, what issues are likely to arise and how might they be addressed for users, for adjacent landholders, for local government? How might obstructions to walking access, such as deer fences, on unformed legal roads be dealt with? How can weeds, pests and environmental damage in respect of the use of unformed legal roads for walking be managed? Is there scope for stopping unformed legal roads in exchange for alternative walking access?

16.1 Key points made in submissions

- Access users agree that signposting and mapping of unformed legal roads will greatly improve access. Most submitters wanting to use unformed legal roads for recreational access acknowledge that farm operations and maintenance of unformed legal roads are issues to be addressed, largely through negotiation with landholders (and, where appropriate, local authorities and/or an access agency) for alternative access, fencing, gates and stiles. Continued use of unformed legal roads by farmers and public walking access are not necessarily seen as mutually exclusive.
- Landholders are extremely concerned that land management will be hindered in a variety of costly ways if all unformed legal roads are mapped and signposted. They also have concerns about their liability to access users who have wandered on to private land. It is suggested that only unformed legal roads that lead to public land be signposted and mapped, and that signage will need to be extensive. Fencing, gates and stiles will also be required.
- Submitters (across interest groups) acknowledge that the major issue arising from signposting and mapping unformed legal roads for local government is the cost associated with surveying, mapping, signposting and maintaining the roads, in addition to administrative costs and conflict resolution. Local government submitters also envisage difficulties with storm water and flood protection (caused by clearing unformed legal roads), pressure to maintain roads for vehicle access and rubbish being dumped on

the roads. Local government submitters also have liability concerns related to people using unformed legal roads that are not safe. Overall, many consider that a framework is required to assess unformed legal roads in relation to their access value, and that not all unformed legal roads need have the same usage.

- Submitters generally consider that the costs of addressing the issues should be met centrally by an access agency, or that an access agency should manage unformed legal roads.
- Most submitters consider that obstructions on unformed legal roads, such as fences or buildings, can be addressed through negotiation with landholders to achieve a means of passage (for example, stiles or automatic gates) or an alternative route. Some submitters emphasise any alternative must allow the same type of access as an unformed legal road (particularly vehicle access). Most submitters, though, consider that some restrictions on vehicle use should be placed on some unformed legal roads for environmental and safety reasons. A small number of submitters, mainly those with recreational interests, want local authorities to fulfil their responsibilities in relation to unformed legal roads (signage and enforcing access or negotiating alternatives), and some submitters want all obstructions to be removed.
- In general, submitters (across interest groups) consider a combination of agencies may contribute to keeping unformed legal roads free of weeds (most submitters comment on the spread of weed seeds and managing weed growth, rather than pests and environmental damage). Most commonly, this includes local authorities, an access agency and user groups, and adjacent landholders in return for grazing rights. Other submitters (largely landholders) think that an access agency should be responsible for management, while other submitters, largely recreationists, think weeds can be managed entirely by farmers continuing to graze stock on the roads. A number of submitters (both landholders and recreationists) consider that local authorities have the legal responsibility for maintaining unformed legal roads. Some submitters think this issue could be addressed in a code of conduct, while a small number of submitters, mainly recreationists, do not think that walking access will lead to any particular problems with weeds, pests or environmental damage.
- Most submitters (across interest groups) consider that the current scope for stopping unformed legal roads should be extended to include an exchange for alternative access. Some local government submitters would like a relaxation of conditions for selling unformed legal roads and the ability to more easily change the status of roads, without having to use stopping procedures. Some

submitters emphasise that any alternative to unformed legal roads must be at least as favourable as the access forgone (that is, not walking access only), particularly in relation to passage for vehicles, and hunters with firearms and dogs. A number of submitters oppose any stopping of unformed legal roads, largely because of the type of access they allow, but also because they are a unique resource for access and future needs cannot be known.

16.2 Issues for access users

Submitters commenting on issues for users agree that unformed legal roads need to signposted and mapped, as wandering from the legal road and becoming lost or inadvertently trespassing are issues. Lack of signage and mapping is seen as the biggest obstacle to the use of these roads. A number of submitters consider that this is a responsibility of local authorities that needs to be enforced. A few submitters see no further issues arising – unformed legal roads are roads and need to be marked as such. However, most submitters responding to this question consider that, despite the public right to access unformed legal roads, the use of such roads is frequently more complicated.

Some submitters feel that only unformed legal roads leading to places of recreational value should be signed and mapped. However, it is also suggested that signage is expensive and prone to vandalism (including that perpetrated by landholders). While there are submitters who think GPS may be helpful to users, others consider it is easiest to ask the landholder for access. Similarly, a number of submitters note that unformed legal roads may lead nowhere and access to recreational amenities will still need to be negotiated with landholders,

> Some (unformed legal roads) may not provide practical access owing to land topography. The marking of unformed legal roads leading to rivers could cause issues in areas where riverbanks are in private ownership (e.g. there are 18 unformed public roads potentially giving access to the Waingongoro River, but the adjacent riverbanks are all privately owned). People stepping off these roads would effectively be trespassing if they did not have landholder permission. Practical access would still need to be negotiated with the landholder.

Signs (erroneously) suggesting that unformed legal roads are private property may deter users. Submitters suggest that, depending on circumstances, discussion with landholders may resolve such issues or local government must enforce access. Another issue for users raised by submitters is the possibility of conflict with adjacent landholders. It is suggested that users (and landholders) need education about rights and responsibilities, and also that a code of conduct may be of some use. Some submitters consider users need to accept the idea of reasonable and responsible use, not unfettered access.

> The status of unformed legal roads is widely misunderstood by the public, local authorities and landholders and an educational awareness program is needed. There is an important and extensive network of unformed legal roads, which are an inherited treasure. Many of these give public access to the countryside, not just to waterways. These need to be protected, and their use encouraged and facilitated.

Submitters also think there may be conflict with environmental values, and conflict with other users, particularly between walkers and four-wheel-drive users. A few submitters suggest use should be monitored, and possibly limited.

> Ultimately, local authorities should be given the power to decide the type of access permissable on particular unformed legal roads. There are many reasons, from both environmental and recreational viewpoints, why there should be limits on the extent to which motorised vehicles can use them.

Users may also face temporary closures due to farming operations. Many submitters consider this is acceptable if adequate notice is provided, or alternative routes are provided and/or landholder contact details are made available.

Other aspects of land use that may affect access seekers' use of unformed legal roads are fences or locked gates, which can be addressed by building stiles. If buildings obstruct access on unformed legal roads, it is considered that an alternative accessway must be provided or the building removed. It is suggested that farmers could continue to run sheep or other relatively unintimidating animals on unformed legal roads (or adjacent unfenced land); alternatively, the unformed legal roads could be fenced (it is variously suggested this be at the expense of the adjacent landholder or the road owner). As unmanaged weeds may obstruct access, some submitters also suggest that farmers could continue to use unformed legal roads for grazing – in a quid pro quo arrangement. Some users suggest that recreational groups could help maintain routes. Weed and pest management of the roads is discussed further in section 16.6.

There are particular issues for recreational users wanting to access unformed legal roads in vehicles. Submitters wanting vehicle access are concerned that their rights to use vehicles on unformed legal roads are not traded away if some unformed legal roads are swapped for other forms of access. However, as will be discussed further section 22.2, landholders, local authorities and, to some extent, other access users have concerns with noise, safety, environmental degradation and track maintenance associated with vehicle use. It is suggested by a number of submitters across interest groups that some limits are put on vehicle use of unformed legal roads. For example, one local government submitter would like to be able to take surrounding land use into consideration to change the status of unformed legal roads without

having to go through complex road stopping procedures. Other submitters support landholders' wish to have restricted access.

> Council supports forestry owners' wishes to retain … restriction. If vehicle access on unformed legal roads is deemed inappropriate Council may consider reducing width of some roads to walking track size.

Some recreationist submitters think that unformed legal roads with no access value could be traded for another route, but other submitters note their opposition to stopping unformed legal roads.

> Unformed legal roads are publicly owned strips of land across private land. They provide an important access right that can be used as is when marked, or can be used in negotiations to gain more direct or other access of the same quality, across private land. We strongly oppose moves by some district councils to abolish such roads.

There is further discussion of submitters' views on the scope for stopping unformed legal roads in exchange for alternative access in section 16.7.

16.3 Issues for landholders

A few submitters consider that the situation for landholders adjacent to unformed legal roads is no different than that of any landholder adjacent to a public road. However, most submitters accept there are particular issues for landholders with unformed legal roads (which are likely to be unfenced and with little if anything to differentiate them from surrounding land).

The primary issue for submitters with landholding interests is access seekers interfering (intentionally or otherwise) with farm operations, including biosecurity problems. Submitters fear that, once unformed legal roads are mapped and signposted, visitor numbers will vastly increase, bringing a proportional increase in the amount of time-consuming interaction with access users, litter, vandalism, disturbed stock, theft, fire, invasion of privacy, and calls for help from recreational users in difficulty. Some submitters with landholding interests are also concerned about conflict with recreationists insisting on unreasonable access. Submitters are also worried about liability for injury to visitors who have wandered off the unformed legal roads onto private land. Unless – and possibly even if – unformed legal roads are signed metre by metre, it will be impossible to stop access users wandering onto private land, particularly if that offers an easier route.

A few landholders express particular concern about the increase in vehicle traffic, which, in addition to noise and privacy concerns, will damage tracks and force other access users to walk on private farm land. Submitters note that, if local authorities start maintaining these unformed legal roads for vehicle use, neighbouring farms will also face increased storm water runoff.

A range of responses seek to address these concerns. A few landholders want the right to refuse access on these roads. One submitter notes that paper roads are in fact confiscated Māori land and should be returned (or land compensated for) to the appropriate iwi. Some consider it would be better not to map and signpost unformed legal roads, or to do this only if the unformed legal road leads to public land (submitters point out that many unformed legal roads lead only to private property). Others suggest negotiated rationalisation of unformed legal roads and other accessways to suit users and landholders, which may include closing roads. If roads are needed, it is suggested that local authorities form and maintain them.

> When landowners are made aware of the existence of unformed roads they often realise that strict adherence to that particular line may be impractical or inappropriate to their land use (e.g. running through a paddock, a crop or a forestry block). Under these circumstances, most are happy to negotiate a more practical line to everyone's satisfaction. Once these access arrangements have been trialled, there may be merit in later formalising them by closing one road and opening another, for example.

As noted previously, it is suggested that farmers keep using the land in operations compatible with public access, such as grazing sheep. A few submitters suggest this is formalised, with landholders continuing to use the land with a notified resource consent.

> For unformed legal roads, one option is to make private occupation of public land a matter for a notified resource consent which the public get to comment on. There would be an amnesty period for existing occupiers to apply. There should be a minimum set of relatively standard conditions that set out what the occupying person must do to maintain the land and facilitate public access.

Submitters suggest using signage, stiles, gates and stock management to address issues of stock disturbance. Fencing and track construction is also suggested. However, some submitters see this as a restriction of their land use choice.

> Landholders could combine public access with farming operations by using a properly swung legal gate with a "public road" notice or if there is still concern then the farmer should fence his boundaries.

Opinion is divided as to who should meet the costs of fencing unformed legal roads. Some submitters with landholding interests feel local authorities or an access agency should survey and fence unformed legal roads, while other submitters consider that, if landholders are concerned about access users wandering off the route, they should fence their adjacent land.

To address concerns about vehicle traffic, it is suggested that there be foot access only or that the road reserve be reduced to 20 metres (that is, effectively allowing foot access only) and that the remaining land be freeholded.

A few submitters think education of landholders and users has a role, and that rights and responsibilities could be promulgated through an access users' licensing system. Other landholders suggest it is reasonable to allow farmers to charge for access or impose a maintenance levy.

16.4 Issues for local government

A number of submitters with recreational interests comment on local authorities not meeting obligations in relation to providing access to unformed legal roads. Many of these submitters consider that local authorities must meet their responsibilities, and identify these roads and ensure they are passable by foot or vehicle.

> Local government has often been tardy in dealing with public complaints about blocked access on unformed public legal roads, and have allowed roads to be unlawfully blocked to the detriment of public access. An access commission overseeing this and acting as an ombudsman in the case of disputes would help.

Other submitters (across interest groups) acknowledge that the major issue arising from signposting and mapping unformed legal roads for local government is the cost associated with surveying, mapping, signposting and maintaining the roads, in addition to administrative costs and conflict resolution. Submitters have conflicting opinions about whether local authorities are obliged to maintain access on unformed roads, but it is generally accepted that they will be under pressure to do so, particularly if the unformed legal roads are used for access only, that is, no longer used by adjacent landholders.

> The transparency that (signing and mapping) will create will force local authorities to actually exercise their legal requirements – i.e. to maintain public access on legal roads.

> Councils are receiving conflicting legal advice on what their statutory obligations are in relation to allowing public access on unformed legal roads … Solutions to these issues could be achieved through either establishing a local government reference group to work through the issues in a meaningful way directly with the Panel or Ministry of Agriculture and Forestry officials, or through the legal roads review work that the Department of Internal Affairs is leading.

Local government submitters also envisage difficulties with storm water and flood protection (caused by clearing unformed legal roads), and rubbish being dumped on the roads. Many submitters note that local ratepayers bear sufficient burdens and that the costs of addressing the issues caused by signposting and mapping unformed legal roads should be met centrally by an access agency, or that an access agency should manage unformed legal roads. Some submitters think that having a code of conduct and educating people about rights and responsibilities may mitigate some of the problems.

> Any increase in demand for enforcing public access must not be at cost to council. Must be done through access agency and central funds.

Many submitters, including recreationists, are open to some unformed legal roads and other accessways being rationalised to enhance public access and suit landholders and local authorities. Some local government submitters would like a relaxation of conditions for selling unformed legal roads under the Local Government Act 1974.

> [A key issue for council] includes the development of new mechanisms to change the status of unformed legal roads to better reflect the best use of the land, rather than always having to go through the complex road stopping procedures.

Some of these submitters consider that funds from the sale of any land should be used for access. Other submitters are concerned that any new access is of the same value, that is, allows the passage of vehicles and people with firearms and dogs.

Once unformed legal roads are more extensively known, local government submitters consider there will be pressure to provide vehicle access. The expense of maintaining this and the effect of vehicles on the natural environment are of particular concern.

> The issue for local government is around their requirement to ensure these unformed legal roads do not have any impediment to access. They too will not always know where the roads are located without an expensive survey. Many of these roads are along coastal and waterway edges where local government wishes to restrict vehicle access to protect these sensitive environments.

In relation to vehicle use, some submitters suggest that local authorities should be able to more easily change the status of roads, without having to use stopping procedures, for example, to determine that unmaintained roads or roads in areas of particular land use are unsuitable for vehicles.

> Unformed legal roads are along banks of waterways unsuitable for and never intended for vehicle access. Unformed legal roads are in parkland, water collection areas or stop banks where vehicle and uncontrolled public access is not desirable. We need the development of mechanisms to change status of unformed legal roads to reflect use of land without having to go through complex road stopping procedures.

A small number of submitters object to any change that might reduce vehicle access.

> Where "paper roads" are considered, access must be kept, up to at least the 4WD level it is now – such roads are not to be "traded off" for foot access only.

A few submitters suggest that recreational clubs may help maintain tracks. Generally, however, submitters consider that there should be some limits on vehicle use of some unformed legal roads.

> I am seriously worried that we are about to see large numbers of four wheel drive enthusiasts, armed with global positioning systems, bolt cutters and chainsaws,

> attacking the countryside as if they have sole rights to it. I think district councils need to be able to control the use of paper roads without going to the extent of closing them – used correctly the paper roads should be an access asset for all New Zealanders, not just those who want to drive on them. Uncontrolled motor vehicle recreation is causing environmental problems and conflict throughout the whole country – the access agency simply must have some ability to audit local councils' actions in the way access is allowed on all public land.

Local government also has liability concerns related to people using unformed legal roads that are not safe. Some submitters consider that these risks can be reduced by documenting use and the associated rights and responsibilities. Others consider that a framework is required to assess unformed legal roads in relation to their access value, and that not all unformed legal roads need have the same usage.

> A framework needs to be established (perhaps akin to the district plan's important waterways framework) for determining which of the unformed roads have current or future potential value, and which of the unformed roads are now obsolete in terms of subsequent development, alternative public access, topography, cost and the like. Under such a framework, some public investment can be justified to improve or extend practical public access. Asserting absolute and arbitrary right of access, regardless of cost, safety, risk and liability is not acceptable to this Council.

16.5 Dealing with obstructions on unformed legal roads

Most submitters consider that obstructions such as fences or buildings can be dealt with by negotiating with landholders to facilitate access via gates or stiles, or provide an alternative route, within a specified timeframe. Land exchange is also suggested by submitters (and is discussed more fully in section 16.7). Some submitters consider that obstructions on unformed legal roads only need to be managed if the road provides practical access to a defined destination.

> Either an alternative access can be arranged. If this is not suitable then to be removed voluntary and if this is not done then removed at [the landholders'] expense.

> Alternative routes acceptable to landholder should be identified and a binding code put on title to guarantee future access in exchange for stopping of road.

As the consultation document specified walking access, a number of submitters suggest using stiles to get over fences across unformed legal roads, but others point out that stiles do not allow vehicle access and that (self-closing) gates or cattle-stops would be preferable (gates must allow vehicle access). Many submitters note that gates and fences must have public access signs.

A few submitters commenting on deer fences in particular note that it is not safe to walk through a paddock of deer (or some other stock), and that providing a gate or stile will still not allow access. In these

cases, an alternative route must be provided; if this is not possible, the fence will have to be removed and the stock shifted.

In general, submitters consider that landholders should meet the costs of dealing with obstructions. Some submitters differentiate between legal and illegal obstruction: if the obstruction has been erected without local authority consent (submitters consider this would commonly be the case), then landholders could be expected to negotiate alternative access or remove the obstruction at their own expense. If the obstruction has been erected with local authority approval (considered by submitters to be rare), then local authorities are obliged to arrange a legally secure alternative. In these circumstances, signs and gates should be paid for by an access agency.

> All costs in this exercise would have to be met by the landowner.

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

A small number of submitters, mainly with recreational interests, want the obstructions removed without negotiation. This action is considered to be the responsibility of local authorities, but a number of submitters supporting removal suggest that an access agency could have a role in monitoring local authorities' response to obstructions on unformed legal roads and/or ensuring they are removed. Some submitters think this action should only be taken when a high-priority need for public access has been identified, or where no equally favourable route can be established.

> Notice issued for the removal of the offending obstacle with a maximum time requirement for its removal. If notice has not been acted on then the public right of access is enforced by removal of fence. Any private property or animals still on the disputed area should be confiscated and sold to pay for the cost involved in enforcing the law and public access.

Another small group of submitters, largely landholders, suggest that the obstructions should simply be left.

> Live without the access – we've all survived nicely with [the obstructions] this far!

16.6 Managing weeds, pests and environmental damage

Most submitters comment on the spread of weed seeds and managing weed growth on unformed legal roads, rather than pests and environmental damage. In general, submitters (across interest groups) consider a combination of agencies may contribute to keeping unformed legal roads free of weeds. Most commonly, this includes local authorities, an access agency and user groups and adjacent landholders in return for grazing rights.

> On farmland by permitting use of all but a metre wide track by the farmers. In bush by using volunteers to create tracks and keep them free of weeds, trap pests and maintain drainage.

> Work with local clubs, Task Force Green and periodic detention labour, landowners and, if all else fails, an access agency.

Other submitters (largely but not entirely landholders) think that an access agency should be responsible for management. It is generally envisaged by submitters that an agency could work with other parties (government agencies, local authorities, community groups and landholders), co-ordinating and funding the work required, which may be done through private contractors.

> Can be managed through the access agency. The agency could have the ability to address these issues by working with other government agencies that already have responsibilities in these areas.

Some submitters, particularly recreationists, think weeds can be managed entirely by farmers continuing to graze stock on the roads. Less commonly, submitters suggest DOC and periodic detention workers. Some submitters (landholders and recreationists) consider that the law is clear, and that local authorities are responsible for maintaining unformed legal roads. Others suggest they be maintained in the same way walkways and national parks are now – by the authority with jurisdiction. Local government submitters give a range of responses to this question. Some consider it is their responsibility, while one considers it is the responsibility of adjacent landholders; most think that a number of parties will contribute to management.

Although most submitters accept that enhancing access on unformed legal roads risks creating weed, pest and environmental problems, one submitter suggests that weeds may be environmentally preferable to grazing.

> [Weeds] are generally better for the environment than having grazing to the water's edge. Natives eventually outgrow noxious scrub – gorse etc acts as a nursery corp.

Few submitters comment specifically on environmental damage. One suggests that some minor improvements, such as permitted detours around a bog or a culvert on a ditch, may save money in damage repair. Several submitters suggest banning vehicles.

Some submitters think this issue should be covered in a code of conduct and that, if necessary, access users (and landholders) could clean equipment between uses. A small number of submitters, mainly recreationists, do not think that walking access will lead to any particular problems with weeds, pests or environmental damage.

> I think this issue is a bit of a red herring and certainly can't see how any pest problem would be exacerbated by opening access along unformed legal roads.

A few submitters note that opening up all unformed legal roads will have adverse environmental effects, and suggest that only high-priority roads are mapped and signed.

16.7 Scope for stopping unformed legal roads in exchange for alternative walking access

Most submitters (across interest groups) consider that the current scope for stopping unformed legal roads should be extended to allow an exchange for alternative access – but not necessarily for alternative walking access. Many submitters with recreational interests emphasise that any alternative must be at least as favourable as the unformed legal roads forgone, particularly in relation to access for vehicles, and hunters with firearms and dogs; others insist that, while there is scope, stopping should only be done after public consultation, with each situation requiring individual assessment.

Local government submitters generally feel there is scope for road stopping but some query who will meet the costs. One local government submitter considers their current roading policy to be effective, with no change required.

A minority of submitters oppose any stopping of unformed legal roads, largely because of the type of access they allow, but also because they are a unique resource for access and can be used as a negotiating tool, and because future needs cannot be known.

> Unformed legal roads should always remain as such. Swap of area for area could be ok but never relinquish the public ownership as future needs are never really known. This doesn't mean that all unformed legal roads need to be developed as maintained walkways.

Note that some submitters are opposed to any new process of stopping but accept the procedures currently in place, and also distinguish between stopping and realigning roads – some of those opposing stopping roads support realignment.

> A legal framework that destroys our rights to legal access will be great for environmental communists. Laws exist for moving legal roads – use them and follow due process.

Submitters also oppose stopping because they consider it unnecessary to incur the surveying costs.

17 Health and safety liability of landholders

Background (from the 2003 Reference Group report and from public meetings)
Many landholders were concerned about the health and safety implications of increased public access to their land. A large number of submitters felt that landholders' liabilities for injuries to others on their land need to be clarified.

Questions asked of submitters: As a farmer, are you familiar with the Farm Bulletin published by the Department of Labour, "If visitors to my farm are injured, am I liable?"? If yes, are you still concerned about your liabilities to visitors under the Health and Safety in Employment Act 1992, and what are your specific concerns?

17.1 Key points made in submissions

- Many submitters are uncertain who is liable for any injury to access users while walking over private property. Submitters consider that the Health and Safety in Employment Act needs to clearly state liability and responsibility in specific situations.
- Overall, submitters (across interest groups) consider that landholders should not be liable and that users enter private land at their own risk. Some submitters add that the only exception to this should be in cases of gross negligence on the part of the landholder.
- Landholders are concerned about being able to warn users of potential risks and hazards, if users do not first ask for access. Landholders also have concerns about the effect of public access on the health and safety of their family and employees.

17.2 Familiarity with the bulletin

Submitters' responses to the question about familiarity with the Farm Bulletin on liability were unclear due to the phrasing of two questions together. In addition, not all submitters commenting on health and safety issues specify whether or not they have seen the bulletin. However, it appears that a majority of landholding submitters are familiar with the bulletin.

17.3 Health and safety concerns

17.3.1 Liability and responsibility

Clarification of liability and responsibility is a key issue for many submitters (access users and landholders) who are uncertain who is liable for accidents or injury to access users on private land. Submitters cite a range of situations that need clarification:

- if the access is managed or leased by another body, for example, a local authority;
- if a user is crossing a waterway;
- on easements;
- the liability of an adjacent landowner in relation to unformed legal roads (for example, electric fencing, or if a landholder is grazing a paper or public road and the user is injured by stock);
- if wandering stock cause injury on a public road because an access user has left a gate open;
- uneven terrain (for example, stock holes, flood damage);
- people camping under old trees;
- pest control by firearms or poison;
- acts of nature, for example, flood;
- accidents involving vehicles, in areas where vehicles both are and are not allowed.

Concerns about stock and health and safety

Some landholding submitters have particular concerns about liability in relation to stock. Submitters consider that the general public are now less aware of the rural environment, have limited stock sense and underestimate the danger from stock. Landholders are concerned about their liability in these situations, as animal behaviour is not a response that the farmer can control or warn about. For example, stock can be unpredictable and dangerous, particularly at certain times of the year, for example, during calving or during the stag roar. Dogs can also be unpredictable, especially if they are "protecting their territory".

A possible solution may be to close access at certain times of the year.

> It is unclear if animal initiated attack (to the point of risk of serious injury or death from antlered stags) is a "work related hazard". Would signage that indicates that deer may be dangerous at certain times of the year be a sufficient notification in the event of people injury or property damage? Dogs etc are also an extreme risk in some situations. Animal aggression, possibly more correctly put as a normal territorial defence response to a space invasion, may not normally be expected by a visitor. Deer farmers' preference would be for both visitor and deer grounds to restrict access at this time rather than warn of its risks.

> Even animals who are perfectly quiet with the people who look after their daily needs can be quite different when confronted with strangers, and especially children from town can be quite intimidating, even to the friendliest of dogs and other animals thus creating a danger that the owner cannot foresee. How can I know that sometime in the future the law will not deem me liable for damages if someone is harmed on my land – either by animals or through an accident situation?

Forestry health and safety concerns

Forest owners have specific concerns about management operations, such as tree felling and earthworks with large machinery and at times of high winds or high fire danger.

> Recovering the costs of managing recreational access apparently increases the legal liability faced by a landowner under Health and Safety legislation. The fact that penalties under Health and Safety legislation could apply in the event of injury through recreational access simply complicates the management of that access. Appendix 6 describes "out-of-the ordinary hazards that wouldn't normally be expected by a visitor". Ordinary forest activities such as "trees being felled", "earthmoving machinery operating" and "pest control" operations are described as "out of the ordinary". We are forced to the conclusion that: 1. public access to forest land cannot go unmanaged if the public genuinely has no expectation of logging, earthmoving and pest control as part of normal forestry; and 2. "managing' public access increases the forest owner's culpability under Health and Safety liability. Therefore, public recreational access to forests needs to be curtailed, or else managed and paid for as a separate work stream.

17.3.2 Notifying access users of risks and hazards

Many landholders express concern about being able to warn users of potential risks and hazards. Landholders state that they need to know who is on their property, where they are and for what purpose, to ensure safety for themselves, their staff and other access users.

> [It] will be impossible to [meet] OSH responsibilities to our farm staff and family with strangers continually wandering on our land.

This is particularly important when people are using firearms (recreational or pest control) or when contractors are working (for example, track development).

Submitters consider that, under the current situation, where access is by permission, landholders are able to inform users of any risks and hazards. Submitters point out that it is impossible to verbally warn an access user of risks and hazards if the landholder does not know that person is on their land. These submitters are concerned that, if the ability to warn of risk is removed, then the landholder will be liable for injury or death. Landholders are also concerned with the practicalities of warning users when they (landholders) are out working on their property, and with being able to prove that they did warn of risks or hazards. A few submitters note that landholders may incur considerable costs in defending civil actions (irrespective of their innocence).

Some of these submitters (assuming that the requirement to seek permission to access private land is removed) suggest that the access proposals contradict the Health and Safety in Employment Act.

> Proposals contradict the existing Health and Safety in Employment Act – people are required to report to management before entering.

Submitters also question who is responsible for seeking information about risks and hazards: access users or the landholder and/or the body responsible for managing the accessway?

17.3.3 Landholders should not be liable

In general, submitters consider that landholders should not be liable for injury to access users, and that access users enter private land at their own risk. Most recreationist submitters express similar views to landholders, although some add that, if landholders have been grossly negligent, they should be liable.

> In my view landholders should bear no responsibility for the well-being of others using their properties for access purposes, even in cases where they give explicit permission for such use. Exceptions may be in cases where the landowner has given consent, but has also been clearly negligent about safety issues.

It is the uncertainty around definitions for phrases such as "gross negligence" that concerns landholders. Several submitters note there has been little case law to define expressions used in the Health and Safety in Employment Act.

A small number of landholders state they have no concerns with liability issues, and a few submitters (with recreational interests) comment that landholders use health and safety legislation as a "convenient" excuse to deny access.

> Sometimes [liability] used as a convenient but spurious excuse for restricting access – e.g. Mt Tarawera.

17.3.4 Waivers and insurance

Submitters suggest that access users sign waivers to free landholders of any liability and also that access users should take out insurance.

> Ensure that landholders will not be liable for accidents to trampers/walkers (we understand that legislation has already dealt with this, but that Government is willing to consider further changes to eliminate any unfair liability to landholders). There is certainly a widely held belief that it is a farmer's fault if a visitor hurts themselves and this is the reason often given for refusal. The reforms proposed by the Labour led government should ensure that any residual farmer liability under Occupational Safety and Health legislation goes. It does need to be made crystal clear that if a farmer is gracious enough to grant permission to a tramper or local person across their land, of course they aren't responsible if that person accidentally breaks their leg or twists their ankle.

17.3.5 Clarify health and safety rules

Overall, submitters feel there needs to be clear and unequivocal rules to set out liability for all access situations, and that health and safety legislation needs to be amended to reflect these clear rules.

> [We believe] that if/when any future actions on outdoor walking access are taken appropriate legislation should be enacted to protect the liability of rural landowners/farmers. These should be drawn up with the full involvement and consultation of rural landowners/farmers and their supporting agencies such as RWNZ and Federated Farmers. Legislation differentiating between a recreational user and a person contracted to provide a service to the property owner should be defined in the Health and Safety Act. Signage noting hazards should be sufficient to absolve property owners from liability for injury to the public.

Specific suggestions made by submitters in relation to amending the Health and Safety in Employment Act are:

- landholders to be exempt from any liability for non-commercial, recreational and leisure use;
- non-commercial recreational users to be responsible for themselves;
- "all practicable steps", "invitees" and "exceptional hazards" to be clarified;
- the Act to be amended to protect landholders from prosecution for access users' injury but not to cover gross neglect or willful danger.

Some submitters suggest better educating the public and landholders about health and safety issues. The code is considered a possible source of information. A few submitters suggest making the Farm Bulletin more widely available, for example, on the website. Signs are noted as an onsite way of reminding visitors that the landholders are not liable and users enter at their own risk. Signs can also inform of unusual hazards (for example, pest control) or recommend access users stick to the designated route, thereby removing liability from the landowner. Another suggestion is for an access agency to place information on unusual hazards on its website or on signs. Some landholders consider that having users ask for permission to access private land would overcome many of the problems associated with health and safety issues.

18 Fire risk and liability

Background (from the 2003 Reference Group report and from public meetings)
Perceived risks associated with fire often led rural landholders to deny recreational access to the public. Many forestry companies were particularly concerned about fire risk. Landholders were concerned about their liability under the Forest and Rural Fires Act 1977 and about the cost of insurance. Little evidence exists, though, that recreational users pose a significant fire risk.

Statement to submitters: The Panel has no specific questions on the issue of fire risk, but any comments would be welcome.

18.1 Key points made in submissions

- Submitters consider that fire poses a real risk and threat to the livelihood of landholders and forest owners, as it has both short-term and long-term economic and environmental effects.
- Submitters agree that landholders should not be liable for fires started by the public entering or crossing their land. However, there are concerns around proving the causes of fires and clarification is needed on who is going to pay for the costs of firefighting and compensation for damage.
- It is suggested that all recreational users or groups/clubs should have public liability or fire suppression insurance.
- To mitigate the risk of fires being started, it is suggested that landholders, in consultation with fire authorities, could restrict access in high fire-risk situations, that users could be educated about fire risk through the proposed code of conduct, and that internationally recognised signage could be used, if necessary.

18.2 Fire risk

Some submitters consider that fire poses a real risk and threat to the livelihood of landholders. All of the forestry submitters raise concerns about fire risk. Geography is a contributing factor, with an increased perceived risk in South Island areas, for example, dry or high country areas in Canterbury, Otago and Marlborough. Submitters note that any fire risk would be heightened during a dry summer.

In contrast, other submitters believe that increasing access would not increase the fire risk and that landholders cause more fires than access users. A few submitters request research or statistics to prove the major causes of rural fires.

> Research required to demonstrate whether fires are caused by walkers and increased by access.

18.3 Liability for fire

Most submitters believe that landholders should not be liable for fires started by the public entering or crossing their land. Liability could be for loss of neighbouring farmland and infrastructure, or loss of life. However, submitters acknowledge that it may be difficult to prove who started the fire and to seek reparation from that individual or group.

18.4 Costs and compensation

Submitters describe both the short-term and long-term effects of fire. Some of the short-term effects include damage to fences, buildings, trees, forestry blocks, crops (hay, barley) and the land (pasture). Some submitters raise concerns about the long-term economic and environmental effects of fire, such as loss of business opportunity, loss of value of the forest or crop, loss of habitat and loss of species or genetic legacy for future generations.

> A bush fire would result in the loss of this ecological habitat and the loss of our business and livelihood. Further to this, our house is surrounded by bush and a bush fire would place my family's life at risk. The proposed public access policy does not contain provisions for the "enforcement" of visitors not being able to smoke or light fires. We would also not be able to protect ourselves from arsonists or other persons that may damage our property, threaten the bush, and threaten our business. If a fire resulted as a consequence of this proposed policy, and we managed to survive the fire, then considerable compensation would be required. The bush would need to be re-established and our business supported until this had occurred. The proposed policy does not include any provision for such compensation.

Submitters want clarification on who is going to pay for the costs of firefighting and damage, and who would pay compensation. Compensation may be for: loss of land, crop or infrastructure; loss to a neighbouring property as the fire spreads; and the future costs from lost opportunity, such as lost forest.

18.5 Insurance

Some submitters suggest that all recreational users or groups/clubs should have public liability or fire suppression insurance. A few submitters comment on their own public liability insurance, for example, all New Zealand Deerstalkers' Association members as a group carry fire suppression insurance of $2 million. Other suggestions are to increase the levy on fishing licences so holders would be covered by public liability insurance, and for the proposed access agency to have public liability insurance. One submitter, though, had questions about the burden of proof, even if access users have insurance.

> It would be a good idea, in principle, for recreational groups to have public liability/fire insurance cover. But how can a farmer prove who caused the damage/fire? What if the damage is caused by an individual not affiliated to a group? It is all very well to say … that little evidence exists that recreational users cause fires, but that is now, when users need to gain permission to go on farmland.

A few landholders comment on their personal need for fire insurance and raise concerns that an increased fire risk would increase the premium.

> Of course there is fire risk both accidentally and intentionally and of course I would have to have insurance cover – probably with a much greater premium than at present.

18.6 Changing access status

Many submitters suggest changing the access status to reduce fire risk. Protocols could be issued (to contractors or visitors), and access could be restricted (high fire danger), closed (high or extreme fire risk, or if a drought season) or closed for the fire season. The decision maker could be the landholder (farmer, local government or forest owner) or the Rural Fire Authority in consultation with the landholder. The decision triggers could be, for example, fire hazard readings, DOC indices or local authority fire laws. Any change to access status could be posted on the proposed access agency's website.

> Areas with significant heritage or environmental values that could be at risk from fire could be identified and fire restrictions noted on the access plans. The access agency would manage this.

> The landowner, across whose land the walking access passes, is in the best position to evaluate the risk and, if necessary and with the appropriate authority, either take steps to temporarily close access or to notify the "agency" to close the access where the risk is extreme, according to the local authority's usual procedures in relation to fire risk minimisation.

18.7 The code of conduct

Many submitters favour the code to educate users about fire and fire risk. Specific content included:

- no smoking;
- no fires;
- what a fire ban and high/extreme fire risk means;
- what to do if you see a fire – who to contact;
- risks and responsibilities – users are liable for fire.

18.8 Signs

Submitters also suggest the use of internationally recognised signage at certain times of the year. Signs could state "no fires", "fire ban in place" or "no smoking", or they could state what to do if a fire starts.

> Use international signage to alert all users about when not to light fires, and what to do if one starts. These would be at the "picnic site" or car park, or when entering forest.

However, several landholders relate personal experiences of users ignoring or missing "no fires" signs, and thus question their value.

> Who will support rural communities that already have huge responsibilities in rural firefighting … No matter how many no fires signs put up, people ignore or miss them.

19 Biosecurity risks

Background (from the 2003 Reference Group report and from public meetings)
Many landholders were concerned that the effects of allowing greater public access without their consent would create biosecurity risks (diseases of people, animals, and plants, weeds and invasive organisms). Landholders appeared to regard the issue of consent as related to the degree of risk, that is, they could control risks if they could restrict access on a case-by-case basis.

Statement to submitters: Please provide details of any specific biosecurity risks that you consider may be exacerbated by persons exercising walking access to land.

19.1 Key points made in submissions

- Most (but not all) submitters feel that increasing public access could exacerbate biosecurity risks because of the opportunities for the spread of weeds, pests and diseases. Submitters have specific concerns with didymo, varroa, weeds and sheep measles.
- Submitters are concerned about the potential for detrimental effects on New Zealand's international markets and on significant natural areas or fragile ecosystems.
- Education is suggested to mitigate the biosecurity risk. Users need to be advised of the perceived risks and how to minimise them.
- It is also suggested that access could be restricted in cases of a major biosecurity problem – as it is now.
- Developing a dog policy may address risks from access users' unvaccinated dogs.

19.2 Biosecurity risks

Many submitters consider that enhancing public access will increase biosecurity risks because it will provide greater opportunities for the transport of disease, weeds and pests. Some of these submitters point out that, even if the risk is small, it cannot be taken.

> It will take only one mistake to destroy our clean green reputation and the risk is simply just too great.

The main biosecurity risks cited by submitters are:

- increase in the spread of didymo (submitters' most commonly specified risk);
- increase in weeds (most submitters did not cite a particular weed of concern, although a few specified ragwort, broom and gorse);

- increase in animal diseases, particularly sheep measles, hydatids, beef measles and footrot, and in varroa;
- human diseases such as giardia;
- spread of disease into stock caused by rubbish and food scraps left by users;
- reduced ability for pest control programmes, both regional and farm based (one submitter raises concerns that deer might escape through breeched security in areas with a tuberculosis (TB) risk and increase the spread of TB):

> Biosecurity issues in a disease outbreak situation of e.g. TB where contaminated meat or offal are carried from one area to another are a real concern. As a farmer when I read these sorts of proposals I get the feeling that the public of New Zealand seem to have very little awareness of the effect some of these proposals will have on the nation's financial well-being . If their salary is paid by maybe central government or a hospital they can't see how a proposal like this could possibly adversely affect them even if there was a disease outbreak. The primary sector seems to be the only ones aware of the risks and costs. Maybe if this proposal goes ahead we will have this lesson to learn in the near future. This country didn't always have streams infected with giardia. Farmers are taking responsibility for effluent runoff but does the tourism industry take responsibility for giardia or the latest new aquatic pests?

Some submitters, though, believe that increasing access, particularly walking access only (without dogs), will not increase the biosecurity risk or that the risk will be minimal.

> No more risks than already exist with current occupiers and normal natural dispersal, e.g. through wildlife.

19.3 Effects of increased biosecurity risks

Submitters concerned about biosecurity consider that there is potential for detrimental effects on New Zealand's international markets, for example, complying with market-led traceability schemes, effects on New Zealand's food safety profile, and the effect on a "clean and green" image.

> Markets for farm produce expect identification of provenance etc. That will be threatened by unknown persons walking on our land; the risks are endless. Anyone on my land will be expected to be barefoot. Note we avoid going on the lamb fattening area ourselves from January–May. Your policy puts our business at risk.

Submitters consider that enhancing public access will increase the biosecurity risk in the following ways:

- the spread of sheep measles and hydatids by untreated, uncontrolled dogs;
- transfer of seeds through boots, mud or clothing; footrot can also be transferred on boots;
- spread of didymo through incorrect washing of equipment;

- inter-property transfer by access routes passing between properties; a few mention the issue of organic or biodynamic properties being on an access route;
- farmland and waterways being used as toilet areas or access users having poor personal hygiene;
- "quick" access by international tourists – tourists can be on a New Zealand property within a day of leaving their own country and may carry pests and diseases not found in New Zealand (for example, footrot) or carry weed seeds on boots not declared or cleaned at border control.

A few submitters also mention the effects of weeds, pests and diseases on the natural environment, and of uncontrolled dogs on native fauna.

> Must also consider impact of access on significant natural areas.

> Dogs are a potential threat to indigenous fauna.

19.4 Solutions

Submitters' comments are focused on the biosecurity risks, and only a small number suggest solutions. Some submitters suggest education will help mitigate the biosecurity risk if access users are advised of the perceived risks and how to minimise them. The code of conduct and signs are possible vehicles for information.

> [We] will oppose any access regime that poses a biosecurity risk to their mahinga kai and sites of cultural significance. Clear, safe practices must be built into any code of conduct to ensure that any biosecurity risk is eliminated.

> Educate people about risks, and supply free information to recreational groups – not just pretty brochures but real information, and talks.

A few submitters suggest practical solutions, such as footbaths at access points or more washing facilities to reduce the spread of didymo.

> Footrot for example can be spread by walkers carrying it from one farm to the next on their shoes. Supply a disinfection trough at the boundary gate, and give the farmer (freely) the means to replenish it, route all tracks so that this can't happen, i.e. trails shouldn't go in and out of adjoining properties, find a way around, set up more local washing facilities than exist now, e.g. for Lagarosyphon weed, Didymo, and anything else.

Access could be closed in cases of a major outbreak (for example, foot-and-mouth), or restricted or temporarily closed on a case-by-case basis – as can happen now.

> In biosecurity emergency, access to specific areas must be restricted.

Developing a dog policy will help to address disease risks from unvaccinated dogs. Suggestions range from banning access users bringing dogs to access users bringing dogs only with a permit.

20 Rural crime and security

Background (from the 2003 Reference Group report and from public meetings)
Many rural landholders reported having experienced crime or security problems in their areas. They attributed crimes (burglary, theft of stock and farm equipment, cannabis cultivation, and petty offences) to the presence of strangers entering rural areas. These landholders believed rural crime is increasing. They felt that increasing public access to the countryside will encourage the criminal element and result in more rural crime. However, other submitters felt that increasing legal access has the potential to bring more "honest eyes" into rural areas, discouraging criminals.

Question asked of submitters: How could the community help to combat crime? Any other comments on rural crime and access are welcome.

20.1 Key points made in submissions

- Submitters' views on the effects of increasing access on crime are divided. Many access users believe people using accessways would deter criminals, although many landholders express concerns over safety and security issues.
- Many landholders are concerned about the ability of the Police to provide an adequate response in rural areas.
- Submitters consider that rural crime can be lessened by vigilance, observation and sharing information with landholders and the Police. Other suggestions include access users asking landholders' permission, permits for access users, restricted hours of access, restricted vehicle access, and keeping access routes away from farm houses and buildings. Suggestions also include tougher penalties for offenders and modifying the Trespass Act 1980 to make it more useful for landholders.

20.2 Effect on crime and security of enhancing public access

Submitters are divided as to whether enhancing public access will increase or decrease rural crime.

> It is naïve to state there is no link between access to land and increasing crime. Accessibility makes crime easier.

> A red herring. Such risks already exist and will continue to do so.

A small number of submitters consider that crime is separate to the access issue, and is an issue across New Zealand and part of urban and rural life.

> This is not a public access issue. [The answer is] like everyone else: contact the Police. Crime in rural areas is no different to anywhere else. Why should the issue of crime be a rural issue? It is a New Zealand wide issue. If you phone the Police in the city regarding a burglary then you will wait for many days before you see a police officer. This is about criminals existing and living in society, and society allowing this to happen. There exists a proposition that laws only exist to protect criminals.

Some submitters consider that people intent on criminal activity will not temper their actions if access arrangements are changed, as criminals would enter private property whether or not legal accessways exist. Thus, increasing crime is not an excuse for denying access.

> In my experience the greater the use of an area by responsible recreation users the more likely the risk of crime is to reduce. This is because those with criminal intent pay no heed now to any restrictions on access but once responsible recreation users arrive their actions come under greater public scrutiny.

Many recreational (and some other) submitters describe walkers and trampers as honest, responsible and law-abiding citizens. These submitters consider that more people using accessways would deter criminals, as recreationists would become additional "ears and eyes". In contrast, criminals are unlikely to be walking, as they often require a vehicle to perpetrate a rural crime.

> The more responsible eyes and ears have a beneficial effect in limiting or controlling crime. This is parallel to the promotion of greater use of recreational opportunities in cities to combat crime.

> The likelihood for increased crime is one of the factors to be assessed when considering new public access. While there will be some sites where public access will facilitate crime, generally crime is incidental to public walking access. The majority of crimes involve the use of vehicles to get to and away from the scene and walking access is irrelevant. In some cases public access will reduce crime, for example the growing of marijuana, because criminals will not want to risk being seen by the public.

Criminal activity is linked with vehicle use by a number of submitters ("not all drivers are criminals but all criminals are drivers"), although one submitter makes a case for vehicle access in relation to rural crime.

> I would like to point out that having public vehicle access to rivers helps monitor and uncover illegal or damaging activities more rapidly. I have been to many places, most especially riverbeds, and seen scenes of devastation by local farmers, councils and contractors with machinery, illegal dams and pumps, dangerous fences, discarded debris such as part-used grease cartridges and lubricant containers (generally from earthmoving equipment), agricultural poison and chemical containers, dumping sites, discarded dead animals, blackened areas where insulation has been burned from copper wire and remains of electric motors … Visitors by 4WD or other means can help discourage and report such activities.

A few submitters raise examples of landholders' criminal activity.

> We note that you have not mentioned the possibility that the landholders themselves may be engaged in illegal activities such as illegally grazing stock in the conservation estate or illegally logging native timber on public land. In this case, clearly the public have a duty to report this to the authorities. However, we note that this is a reason for some landholders to attempt to block existing public access as they do not want to be observed carrying out illegal activities.

20.3 Landholders' concerns

While some submitters doubt enhanced access will lead to increased crime, many landholders express deep concerns about the safety and security of themselves and their families and staff. Submitters describe personal experiences of theft, stock death and losses, tampering, vandalism and confrontation. Landholders in more remote locations feel more at threat from rural crime.

Some submitters consider that increased access will provide an opportunity for offenders to more easily "case the joint" and then return at a later time to undertake illegal activities, or to carry out opportunistic crimes, particularly theft.

Landholders' other concerns include: signs and mapping facilitating criminal access to rural properties; confrontational situations "getting out of hand"; retaliation by offenders; and the cost burden of replacing assets, installing extra security and paying insurance premiums. People having access at night is a particular concern for some landholders.

> [We] have grave concerns over the public wandering close to housing and buildings day and night.

20.4 Suggested solutions

Submitters suggest that landholders install more security and locks, and that access routes be kept away from buildings and houses. Submitters (including recreationists) commonly suggest that access users and landholders should exercise vigilance and report all suspicious behaviour (for example, cars seen repeatedly in an area) and indications of criminal activity (for example, cut fences) to the Police by dialling either 111 or an 0800 number. Landholding submitters, though, are concerned about the isolation of rural properties and do not consider prompt Police backup to be feasible.

> Issues around the retention of Police resources in more isolated areas of NZ need to be addressed.

> I have received threats to my property and stock in retaliation to confronting offenders on my land – no Police to assist.

A few submitters acknowledge that such reporting would require a behavioural adjustment for people.

> [The community could help to combat crime] by reporting it when they see it, which is unfortunately contrary to the Kiwi way of doing things as people too often see this as "snitching".

> I don't agree that more public will provide more eyes, therefore, counter illegal activity. People don't want to get involved in other's activities because of the potential for harm and conflict.

Submitters also suggest enhanced neighbourhood watch activities, but a few landholders question why the burden of self-policing due to increased public access should fall on the rural community.

> We already have neighbour watch, do we need our own police force too?

Some recreational and landholding submitters suggest that a permit system or vehicle identification system be developed, although many landholders with concerns about security consider that people should ask before entering the property, giving the landholder the right to deny access.

> Access by "asking" solves many issues – as the landowner knows who is present, and can follow up if problems arise. Any increase in un-monitored access will obviously increase opportunity for crime.

A small number of landholders also request tougher penalties to deter offending, and modifying the Trespass Act 1980 to make it more useful for landholders. A few submitters consider that having a code of conduct will be helpful in setting out acceptable behaviour, but also want information on how rules in a code will be policed.

> Code of reasonable conduct for public access will help and … will be used in the Courts as a means of assessing whether conduct has been appropriate.

21 Treaty of Waitangi concerns, access rights to Māori land, and wāhi tapu and rāhui

Background (from the 2003 Reference Group report and from public meetings)
Most Māori submitters believed that the Crown has an obligation to protect the property interests of Māori. They opposed the idea of legislated access across Māori land but did not oppose access by permission of the landholder. Māori submitters wanted to protect customary rights and keep customary sites and resources safe. Some submitters observed that charging for access to Māori land may be the only economic use of the land. In general, Māori submitters favoured negotiating access at a local level.

Statement to submitters: The Panel would welcome comment on Treaty of Waitangi concerns, access rights to Māori land, and wāhi tapu[4] and rāhui.[5]

21.1 Key points made in submissions

- Some submitters, particularly iwi groups, believe that the principles of the Treaty should be considered in the principles that guide access.
- Most submitters consider Māori land should be treated in the same way as all private land, that is, access users should request permission. It is suggested that the details of contact people be held on an access agency database.
- Views range on charging for access. While some submitters object, others consider it acceptable if it is clearly explained, notified and consistent.
- Submitters agree that wāhi tapu and rāhui should be respected and protected. It is suggested by some submitters that such sites would be better protected if they were marked in some way, but others consider that marking sites is not appropriate and that local consultation is the best method of negotiating access.

[4] A particular category of ancestral land or water that is held in the highest regard by Māori. It can include places, sites, areas or objects that are sacred and special to an iwi.

[5] A declaration by an authorised Māori person that a specific area of land is tapu, that is, restricted, forbidden, set apart, sacred.

21.2 Treaty of Waitangi

A small number of submitters comment directly on the Treaty of Waitangi. Some submitters think that Treaty education would be useful, and a few note that the proposed access agency and local authorities need to be well versed in the Treaty to deal appropriately with public access across Māori land.

Some submitters (particularly but not only iwi groups) believe that the principles of the Treaty should be considered in the principles that guide access.

> Any legislation must contain a Treaty clause requiring decision-makers to act in accordance with the principles of the Treaty of Waitangi, in recognition of the customary and Treaty rights possessed by [iwi].

It is noted that the Treaty grants Māori free and undisturbed use of their land. One submitter considers that the Treaty extends equal rights to Pākehā and Māori, and thus protects all private property rights. Several submitters think that the Treaty is a historical document without relevance to public access negotiations.

A few submitters think that public access should be considered in Treaty settlements.

> I suggest that where Crown land is allocated back to Māori with ability to provide access to public land, such access be a prerogative in any settlement.

21.3 Access rights to Māori land

Many submitters state that all private land should be treated equally. Access should be by negotiation locally and property rights respected. A small number of submitters (iwi groups and others) note culturally appropriate methods of requesting access across Māori land.

> The key concept attached to those traditions is that one asks for permission to enter the land or area and gain access to the people of that place. If no permission is sought, then those entering without permission were risking retribution, which might have come in a physical form, from the tangata whenua. This is not a peculiar situation. Many peoples stand and fight for the right to approve or deny access to their homelands or property. Consider the means by which Māori people and others gain access onto marae. One asks permission to enter. One demonstrates their knowledge and relationships with the host when seeking access, one recalls the connections between the groups, and recounts the times when previous engagements occurred.

One submitter notes the generous response received to requests for access if Māori traditions are respected.

A few submitters consider that this also means Māori land should not be exempt from having public accessways imposed (for example, by subdivision), as happens to other private landholders.

The methods used for negotiating access and consultation may be different to those used for individually owned private land. Multiple ownership and knowing who to contact for access are concerns for some submitters.

> Getting permission to cross Māori land is very difficult. Difficult to locate an elder with authority, then difficulty using the permission; access almost impossible to achieve by clubs or individuals because of multiple ownership. Negotiated marked route using Walkways Act has worked, e.g. Cooks Cove in East Cape.

Submitters suggest that contact details be held on an access agency database or be available through local authorities. One submitter suggests that the Māori Land Council should arbitrate where multiple landowners cannot agree on access arrangements.

A few submitters think that Māori have provided enough land for public access, and no more should be sought.

21.4 Charging for access

Some submitters discuss being charged for access on Māori land. Most of these submitters object to paying for access. Mount Tarawera was the most commonly cited example.

> Customary Māori land differs from general land in that the "Queen's Chain" will rarely have been laid off … In general, but not in all cases, Māori do not seek to deny public walking access. In some, more controversial circumstances, Māori seek financial return by charging for access, such as with Mt Tarawera. In such cases the Crown may need to discuss an appropriate response to meet with the interests of Māori but also provide for appropriate public access which meets with the aim and principles set out by the Access Panel. The way in which Māori land is dealt with will differ from the response in respect of non-Māori land, but the broad objectives should be largely the same. Such a response has been provided for Lake Taupo and the Rotorua Lakes and appears likely for the bed of the Waikato River. In general, where the access is to enable access for recreational use of introduced fish and game species, no access fee should be payable by the recreational user.

Several submitters complain of random charges being made for access, or of intimidating behaviour reducing public access. Some recreationist submitters do not object to charges being made if they are explained, notified and consistent. One submitter suggests that Crown intervention may be necessary to resolve issues around charging for access.

Other submitters defend charging for access.

> Our land generates limited income by selling access rights for recreational, tourist and hunting purposes. It is a large area and difficult to control. Our commercial arrangements provide limited control, but at least we know who is accessing the land. The names of those given access should always be available to the landowner. Any access that prejudices our limited opportunities for revenue generation cannot be accepted. Compensation for public access may be a possibility, but if such access interfered with revenue generation from the rest of

> the land it would be unacceptable. Other "public initiatives" in respect of our land are seen as an infringement of our treaty and private ownership rights.

A small number of submitters comment on people being allowed access to land depending on their ethnicity. These submitters consider that Māori (or any other group) should not have exclusive access rights where the public has none. Submitters also questioned whether it would be necessary to carry papers identifying their ethnic group.

21.5 Wāhi tapu and rāhui

Submitters who comment on wāhi tapu agree that sites of cultural importance to Māori must be respected, recognised and protected. Some submitters consider that this would be better achieved if such sites were signed and perhaps also fenced. One submitter considers that, where sites are not defined by iwi, formal arrangements cannot be made and the situation is open to abuse (that is, charging for access). However, other submitters note that the locations of wāhi tapu are traditionally held on "silent files" and local consultation is the most appropriate method of negotiating access. Some submitters note that access to some sites may not be appropriate, or that accessways should be routed away from wāhi tapu.

Some submitters suggest that educating people (including tourists) of the cultural significance and importance of particular sites to Māori will lead to better understanding. This could be achieved through the code of conduct or via information boards at each site.

> I see no real difference for Māori land. Recognition of significant sites, wāhi tapu and rāhui is entirely consistent with the respect to which all sections of the community are entitled. These matters should be covered in the proposed code of practice as guests on, or adjacent to, private property.

Iwi submitters are cautious about giving public access to, or near, culturally significant sites.

> Facilitating greater access for the public has particular consequences for tangata whenua. Open public access has resulted in the desecration of tāonga and both identified and unidentified sites may be subject to damage. The Panel must not support any initiative that may result in further public access to customary sites.

Those submitters who comment on rāhui agree that any rāhui must be respected – if people know of its existence.

22 Additional matters

22.1 Key points made in submissions

- **Vehicles** – Some submitters, generally those with recreational interests, feel that the access rights of all users, including those with vehicles, should be considered by the Panel. However, other submitters support walking access only, while others suggest limited or restricted access. To mitigate confusion and potential for conflict, submitters suggest classifying each access route, including providing information on vehicles in a code of conduct, having a permit system for users or a vehicle identification system, and vehicle users asking the landholder for permission.
- **Natural environment** – Submitters from all interest groups express concern about public access adversely affecting the natural environment. Suggested mitigating actions include (potential) access sites having a case-by-case environmental risk assessment, public education, restricting access in some places, and physical solutions (for example, providing footbridges, rubbish bins and toilets).
- **Hunting access** – Some submitters with recreational interests consider that carrying a firearm and taking a dog should be included in the Panel's considerations (firearms disabled and dogs leashed while travelling to hunting areas). Hunters are concerned that the access they have now is not reduced as a result of this consultation, particularly on unformed legal roads.
- **Exclusive capture of fish and game** – Many submitters with recreational interests are concerned about the "exclusive capture" of fish and game resources (where private land prevents access to public land or waterways and landholders reduce or prohibit access in order to exclusively use the resource themselves or sell access for profit). Addressing exclusive capture is considered by submitters to be a problem for an independent third party such as an access agency. Some submitters suggest that exclusive capture be legislated against.
- **Charging for access** – A few submitters raise the issue of landholders charging for access where fish and game are not (necessarily) involved. Some of these submitters oppose any charging for access because it is socially divisive; others may accept such charges depending on the circumstances, for example, where a landholder is providing services or incurring particular direct costs.
- **Private property rights** – Many submitters, largely but not exclusively landholders, state the need to uphold private property rights. These submitters consider that access to private land is not a public right,

and that people wanting access should ask permission, that is, the status quo with respect to private land should remain. Submitters consider that any access on private land must be the result of negotiation and agreement, with any reduction in property rights requiring compensation.

- **Need for public access** – Some submitters feel that public access is deteriorating and the issue urgently needs to be addressed; other submitters consider there is sufficient public access and little demand for any increase, and that the scope of any demand has not been shown in the consultation document (which a few consider biased in favour of access users). Other submitters comment on particular situations in which there is a need for improvement, namely improved access to DOC lands and better access outcomes from pastoral lease tenure reviews.
- **Queries** – A small number of submitters ask questions about topics or issues not specifically addressed in the consultation document. These queries centre on definitions of public access, funding, waterways and the Queen's Chain, and the natural environment.

22.2 Vehicles

Vehicles are considered by submitters to include bicycles, mountain bikes, two-wheel motorbikes, quad bikes or four-wheel-drive vehicles (submitters' discussion of vehicle access often also includes horses). Many submitters categorise vehicles by their potential to cause environmental damage or noise: horses and bicycles are generally considered "gentler" forms of access, while four-wheel-drive vehicles and motorbikes are considered to cause more damage.

Some submitters, generally recreationists, feel that the access rights of all users, including those with vehicles, should be considered by the Panel. Reasons for this include that:

- vehicles open up access to a wider range of users (including disabled users, and very young and very old users);
- people now have limited time available for recreation (and need to drive rather than walk to a particular point);
- people enjoy using a four-wheel-drive off road.

These submitters want the scope of the Panel's document to be widened to include vehicles. However, other submitters support walking access only, while others suggest limited or restricted access. Reasons for this include:

- protecting the natural environment (including not spreading weed seeds);

- safety of access users;
- limiting noise and inappropriate use;
- reducing opportunities for those with criminal intent;
- considering walking through the land to be the essence of public access to the bush and back country.

Submitters also express some uncertainty about vehicle access in various circumstances, for example:

- if there has been historical vehicle access on a route, who determines (and how) whether that status will continue to exist;
- who differentiates (and how) between the use of a particular public access route for walking and for vehicles, and which vehicles are appropriate;
- are all vehicles allowed on all unformed legal roads and who is responsible for management and decision making in relation to this;
- which existing legislation covers use of vehicles on access routes (a few submitters express concern about the Local Government Act 1974 and the lack of distinction between walking and vehicular access)?

22.2.1 Solutions

Classifying access routes

Some submitters consider each access route needs to be classified to remove confusion and potential for conflict. Routes could be classified as:

- walking only or vehicles permitted;
- if vehicles permitted, type of vehicle and any restrictions (for example, vehicle type, time of year or terrain);
- if vehicles permitted, suitability for each vehicle's type.

Some specific suggestions of ways to classify access for vehicle use include:

- the local authority being able to determine by way of a Special Consultative Procedure that certain roads within its district (for instance, those not currently being maintained) are not suitable for certain categories of use;
- having all vehicles and horses travelling below the high tide mark, except at river mouths;
- having two categories of access – open to all users, and by permission only for vehicles and dogs;

- having three categories of access – open vehicle access, controlled vehicle access, and not suitable for vehicles;
- having four categories of access – walking only, motorbikes, quad bikes (including all-terrain mobility bikes), and all four-wheel-drive vehicles:
  - classifying routes by "purpose of access" means focused access (for example, four-wheel-driving), activity-focused access (for example, fishing) and passive-focused access (for example, historical research);
  - the type of access (walking, vehicles) could vary with the terrain, the type of vehicle and the driver's capabilities.

Access classification should be shown on maps, in a database and on a website. Signs at the access points and where access intersects with formed public roads are other suggestions.

Education

Some submitters mention that the code should contain information on vehicles. There are no specific suggestions for content. A few submitters mention the Tread Lightly! concept used by four-wheel-drive clubs.

Permits and vehicle identification

Some submitters favour a permit for users or a vehicle identification system – legitimate users could thus be identified and others prosecuted. One submitter specifically suggests that belonging to the New Zealand Four Wheel Drive Association should be a prerequisite for vehicle entry to certain areas. Asking the landholder for permission to bring a vehicle onto a property is another option that submitters suggest.

22.3 Firearms and dogs (hunting access)

Over a third of submitters want the Panel to broaden the scope of its report to specifically include hunters with firearms and dogs. These submitters acknowledge that landholders and other users have concerns about encountering firearms and dogs and suggest that firearms be disabled or put in a gun slip and dogs be leashed when hunters are travelling to hunting areas.

> Hunters have been excluded from the Panel's considerations yet they should not be treated any differently. Where it is necessary for hunters to cross private land to get to public land then their dogs should be on a leash and their guns fully enclosed in a gun slip with harsh legal penalties for breaches of this code of responsibility.

Submitters with hunting interests state that hunting is a legitimate activity enjoyed by many New Zealanders, and that hunting controls feral animals. A few of these submitters would also like the Trespass Act 1980 to be amended in relation to the penalties for carrying firearms across private land for the legitimate purpose of hunting on adjoining conservation land. Submitters are concerned too that the access they have now is not reduced as a result of this consultation, particularly on unformed legal roads.

Across interest groups, submitters comment that conditions for hunters can be set out in a code of conduct, with education about gun safety and having dogs in rural areas enhanced through the firearms permit system. Other submitters point out that existing laws cover the carriage of firearms.

A small number of submitters (largely landholders) object to people with firearms and dogs being able to freely cross private land as might be negotiated for other walking access users. These submitters consider that, for safety reasons, hunters should first ask the landholder's permission to cross private land. A few submitters object to any enhanced access for people with firearms and dogs. Some of these submitters consider that hunters have sufficient access now, while others have had difficulty with some hunters repeatedly trespassing (without penalty) and releasing feral pigs that carry TB.

22.4 Dogs

A few submitters comment on the decreasing number of places they can takes dogs for day-long (or more) walks. Submitters note that dogs provide some protection for women walking alone.

22.5 Exclusive capture of fish and game

Many submitters with recreational interests are concerned about the "exclusive capture" of fish and game resources (where private land prevents access to public land or waterways and landholders reduce or prohibit access in order to exclusively use the resource themselves or sell access for profit). Submitters feel that exclusive capture is increasing and some submitters provide examples of the incidence. Free access to fish and game is considered by many submitters to be a unique and defining characteristic of New Zealand that is important for national identity and a drawcard to tourists. A number of overseas submissions were received on the topic, highlighting these points.

> I have spent many holidays in New Zealand specifically to fish and hunt the rivers and public lands of your country. Our trips require food, lodging and the hiring of local guides all of which is bought and paid for in New Zealand. We have recently seen several of our "favorite spots" become inaccessible due to changes in private ownership, causing our group of travellers great consternation. From my perspective, one of the main reasons we must leave the USA in order to

> find the best fishing and hunting is that the USA has most of such places locked behind private owners' fences. If New Zealand continues down that same path of exclusive capture, it will surely fall out of favor as an outdoors travel destination and will lose the economic benefits that come with visitors such as myself. As a friend of New Zealand I hope that the walking access rights enjoyed in your lands are preserved and even enhanced in the future.

Exclusive capture was addressed in the 2003 report on public access, and many submitters ask why it has not been included in this consultation. Addressing exclusive capture is considered by submitters to be a problem for an independent third party such as an access agency or for Fish & Game. It is suggested that exclusive capture be outlawed, for example, that Fish & Game be empowered to close any such fishery or compel public access on that land. (Several submitters suggest amending the Conservation Act 1987 to close off the "loophole" allowed in section 26.[6])

A very few submitters query the extent of exclusive capture; one considers imposing a legislative mandate to be an overreaction to a small problem. A few submitters also consider that private landholders who are providing a service, such as tourist lodges, should be able to obtain exclusive rights for the people paying for that service.

22.6 Charging for access

A few submitters raise a slightly different issue about landholders charging for access where fish and game are not (necessarily) involved. Some of these submitters oppose any charging for access because it is socially divisive. Other submitters consider an access agency should reimburse landholders if any direct costs are incurred by the provision of access, or that landholders could charge individuals wanting more than walking access (for example, vehicle access). There are also submitters who support landholders being able to charge for access to private land where services are provided, particularly if walking access is still available free of charge. One landholder explained their decision to charge for access:

> Along with our neighbour we have … opened a 54 km commercial private walking track, through our coastal properties … This was brought about by increasing pressure by the public to get to the beach. In this way we can monitor who goes and where they are. It is also a way to educate walkers on fauna, flora, history and areas of interest. Motorbikes don't only go into these areas, but it is what they bring out, damage to fauna, flora and stolen property whilst they are there. The access point these motorbikes leave from ironically is a Department of Conservation run camping ground, where they gather revenue from the people that travel our land to experience the scenic beauty and fishing! We have tried to raise these concerns with the Council and Department of Conservation and

[6] Some submitters consider that section 26ZN of the Conservation Act 1987, which specifically prohibits the sale of fishing and hunting rights, is being undermined by an apparent loophole in the law that allows the sale of access rights for these same purposes.

they claim the current law gives them nothing they can do to stop this happening. Damage to large tidal rock pools, coastal bird nesting sites is increasing. We as landowners do care, we live with these areas every day, we are not the visitors but are left to clean up the mess.

22.7 Protecting the natural environment

Some submitters (from all interest groups) express concern about public access adversely affecting the natural environment. These submitters give examples of environmental damage, and how increasing access could exacerbate damage. Specific areas of concern are:

- damage to fragile or sensitive coastal environments;
- intentional damage – vandalism;
- unintentional damage – foot trampling (for example, native flora);
- erosion through increasing access – foot traffic, vehicles, board walks – specifically in sand dunes and pumice soils;
- littering;
- risks to flora and fauna and their specific habitats;
- noise;
- pollution (toilet waste, rubbish, waterways);
- pests, weeds;
- fire.

Submitters want to ensure that access users (and landholders) respect and protect the environment. They also want "proper care", as stated in the principles, to be clarified. Many submitters note that the extent of environmental damage varies between sites, and that each site needs a case-by-case assessment of potential risk. In particular, sensitive ecosystems or habitats must be identified.

Education (through an environmental code or the proposed code of conduct) and physical solutions are suggested to mitigate the effects of public access on the environment. The physical solutions include the provision of stiles, footbridges, toilets and rubbish bins. Submitters also suggest that access could be differentiated for different uses and access types, for example, access via foot, horse, bicycle, motorbike or vehicle. Particular comments are made about controlling the use of vehicles to prevent environmental damage. A small number of submitters consider that inaccessibility has preserved the natural values of the environment, and a few submitters want to prevent or control access to some areas (or at particular times) for this reason.

Several submitters mention the contribution anglers and hunters make to protecting the environment; others note that "law-abiding citizens"

and recreational club members are unlikely to abuse the natural environment.

22.8 Property rights

Many submitters, largely but not exclusively landholders (including local government, iwi groups and submitters with industrial interests), state the need to uphold private property rights. In essence, these submitters consider that access to private land is not a public right, and that people wanting access should ask permission, that is, the status quo with respect to private land should remain. To do otherwise, these submitters feel, undermines private property rights ("a cornerstone of New Zealand's democratic society"), threatens land management (that is, business operations) and risks the safety of landholders and other access users. Submitters consider that any access on private land must be the result of negotiation, agreement and possibly compensation (with any reduction in property rights requiring compensation).

> Whilst [we] are comfortable with the Outdoor Walking Access intent, … we are concerned that the interests and businesses of all rural landowners/farmers are protected by law and that they retain their rights and abilities to exclude the public from automatic use and access to their private land in the same way that private urban land is protected.

An iwi submitter considers that the Panel has not adequately explored how Māori traditionally gain access across land.

> The proposed aim does not take account of the cultural values and practices of Māori in gaining access to lands or waterways.

Other submitters suggest a need for a balanced view, stating that private property rights are not absolute and do not extend to the privatisation of public resources (for example, unformed legal roads). A number of submitters consider that altering the status quo with respect to private land is a focus of this consultation.

> There are two sets of property rights in respect of walking access; private property rights and public rights as summarised by the provision of public lands, the "Queen's Chain", water, fisheries and wildlife. Achieving the right balance between public and private property rights is essential. Land ownership is not absolute; the Queen's Chain exists in many areas, there are plenty of unformed public roads and water, fisheries and wildlife do not attach to the title in New Zealand as they do in other countries. The public expects reasonable access to their own resources, while recognising legitimate private property interests where these exist. The essential question is whether landowners should be able, as at present, to deny access across or adjacent to their property as they see fit. If so, there is no improvement on the status quo and the issue has been addressed. If landowners remain able simply to over-rule the legitimate and reasonable property rights of the public then this entire process would have failed the legitimate interests of the recreating public.

While some submitters suggest that walking access is unlikely to significantly affect land use, only a very few submitters suggest that there ought to be less emphasis on private property rights.

> The Resource Management Act has introduced a strong property rights focus – New Zealand legislation needs to be more community focused.

22.9 Differing circumstances and land use

A number of submitters point out that there are differing circumstances associated with access to water margins and public land. For example, access to hydro-controlled lakes and water catchment areas will require particular consideration. There are also issues around the reasons why people want the access (for example, to view an historic site, to fish or hunt) and the type of access that has developed historically in particular areas and may work well. For example, submitters from the Chatham Islands point out there is no Queen's Chain in the Chathams, and consider that their informal systems require no changes.

> On the Chatham Islands protocols have been informally developed over a long period of time. These protocols are well respected by locals and visitors. It is [our] view that similar protocols, if respected in the rest of New Zealand, would help solve the walking access issue that the Panel has been established to address … If you want to cross private land you … [ask] the landowner. Permissions are freely granted with the expectation that no damage will be done, gates will be left as they were found and litter is not left behind … either leave the Chatham Islands out of any recommendation … or adopt [our] ways as a system that could apply to the whole of New Zealand.

Submitters note that blanket responses to access issues will be inappropriate, and that local knowledge and decision making will be important if any changes are to be successful.

22.10 Need for public access

A small number of submitters comment on the extent to which there is any need for enhanced public access. Other submitters comment on particular situations in which there is a need for improvement. Some submitters feel that access has been deteriorating and action is needed.

> There is an urgent need to create legal walking access to and along rivers, lakes and the coast and to the Department of Conservation Estate. Privatisation, exclusive capture, an enormous increase in tourism, fishing and hunting guides, overseas ownership, absent landlords and corporate farms have all changed the goodwill of many landowners. No longer does the Queen's Chain goodwill exist.

Other submitters consider there is sufficient accessible public land now, and little demand for any increase in public access.

> I submit that there is no need for further legislation. The Panel offers political creditability to a disgruntled few. Costs a huge amount of money to appease those disgruntled few and puts their perceived rights and wishes above the actual and existing property rights of others.

Some submitters consider there is insufficient information presented in the consultation document about the need for enhanced public access.

> There is insufficient information available on the demand and supply of outdoor recreation land on which to base policy let alone a detailed plan of action including having an agency – you need to do a fundamental analysis of demand and supply of accessible land and waters for outdoor recreation before getting to solution.

A few submitters express concern that the consultation document shows a bias towards the interests of recreationists, and an assumption that public access will increase.

> I am concerned that the overall flavour of this document/questionnaire is that of when the increased land access goes ahead, rather than if it does. And also of the landowners being expected to get used to it and the rights of "walkers" being foremost. This has come across very strongly in this questionnaire despite the explanatory documents sounding more neutral as befits a true public enquiry process.

22.10.1 Improve access to the conservation estate

Submitters comment on the need to improve access to DOC lands. These submitters refer both to their perception of DOC's emphasis on conservation rather than access, and the closure of underutilised tracks. Some of these submitters suggest that these issues be resolved before private landholders are expected to provide access.

22.10.2 Pastoral lease tenure review

Submitters also comment (some extensively) on pastoral lease tenure reviews and the need for better public access outcomes.

> Tenure review [access] outcomes are not satisfactory. Some walking easements are not accessible to the average person – access should be adequate and reasonable.

22.11 Queries

Submitters have a number of queries about topics or issues not specifically addressed in the consultation document. These have been aggregated and categorised as follows.

22.11.1 Definitions of public access

- Who defines "reasonable expectations of public access" and what are they?

- What legal rather than voluntary constraints will be placed on public access?

22.11.2 Funding

- Who will fund new walking access proposals?
- What compensation is there for landholders for providing access on private land?
- Who is responsible for the costs of providing access and maintaining accessways?
- Will the Government be accountable for access users' accidents on private land?

22.11.3 Waterways and the Queen's Chain

- What is the definition of a lake? Will this include privately owned artificial lakes?
- What will be classed as a waterway?
- How wide is the Queen's Chain?
- At what point is a creek or stream going to be defined as having a Queen's Chain on either side of it? (All creeks change course, shape and height, depending on rainfall.) Who will make this decision?
- Who administers what land? For example, riverbed with adjoining marginal strip, paper road, and many reserves.
- How will access impact on the maintenance of waterways by local authorities?
- Does the Queen's Chain have any standing in a court of law?

22.11.4 Natural environment

- How will the Panel or an access agency resolve any conflict between public access and preserving environmental values?
- How will the Panel or an access agency reflect that, in some areas of high ecological value, access is not desirable?

22.11.5 Other

- Will landholders have any recourse against decisions to provide access along selected waterways?
- Will access (across private land) be 24 hours a day, seven days a week?

Glossary

Accretion: The process by which soil, sediments and other matter accumulate, increasing the area of land. This process is the reverse of "erosion". The term accretion is usually applied to deposits formed in river valleys and deltas.

Access strip: A statutory easement made under part 10 of the Resource Management Act 1991.

Biosecurity: The protection of a territory from the invasion of unwanted plants, animals, micro-organisms or diseases.

Cadastral data: Information defining the legal dimensions of land, including property boundaries.

Cadastral maps: Maps representing cadastral data in graphical form.

Crown land: Land vested in Her Majesty the Queen in right of New Zealand that is not set aside for any public purpose (such as a national park or conservation land) and not held in private title.

Disability-assist dogs: Defined in the Dog Control Act 1996 to include "seeing eye" dogs, hearing dogs for the deaf and other dogs that help people who have disabilities.

Erosion: The process of gradually wearing away land, commonly by the action of water.

Esplanade reserve: A strip of water margin land vested in a local authority under part 10 of the Resource Management Act 1991.

Esplanade strip: A statutory easement along a water margin made under part 10 of the Resource Management Act 1991.

Landholder: Includes owners of land, lessees, licensees, sharemilkers, trustees and other persons who have authority to grant access permission.

Marginal strip: A strip of land along a water margin reserved by the Crown on the disposal of the adjoining land by the Crown. These were originally made under various Land Acts and were fixed in location irrespective of movements in water margins. Since 1987, they have been made under the Conservation Act 1987, and those made since 1990 move with any change in the location of the water margin.

Mobility device: A vehicle that is designed and constructed (not merely adapted) for use by persons who require mobility assistance due to a physical or neurological impairment and is powered solely by a motor that has a maximum power output not exceeding 1500 W or any other device that meets the definition in the Land Transport Act 1998.

Paper road: A commonly used expression for an unformed legal road. See "unformed legal road".

Queen's chain: A commonly used expression for a strip of land (usually 20 metres wide) reserved for public use alongside a water margin, including the sea shore, lakes and rivers.

Rāhui: A declaration by a Māori person with authority to do so that a specific area of land is tapu. See also "tapu".

Tapu: Restricted; forbidden; set apart; sacred.

Territorial authority: A city council or a district council recognised as such under the Local Government Act 2002.

Topographic map: A map that shows a limited set of features, but including at the minimum information about elevations or landforms. Topographic maps are common for navigation and for use as reference maps. They have a specified scale.

Unformed legal road: Land legally set aside as being road, but not formed as road. That is, it may be unsurfaced, unfenced and often indistinguishable from the surrounding land but it is still subject to all the legal rights and obligations that apply to formed roads, including the right to pass and re-pass with or without vehicles and animals.

Vehicles: Cycles, horses, motorbikes, four-wheel-drives, cars, etc

Wāhi tapu: A particular category of ancestral land or water that is held in the highest regard by Māori. It can include places, sites, areas or objects that are tapu, sacred and special to an iwi.

Walking access: Right to pass and re-pass on foot, which includes the use of mobility devices and disability-assist dogs.

Water margin: A general term referring to the point at which the water in a sea, lake or river adjoins dry land. For legal purposes, more specific terms are used, such as mean high water mark or mean high water springs.

References

Land Access Ministerial Reference Group (2003) report *Walking Access in the New Zealand Outdoors*, Land Access Ministerial Reference Group, Wellington.

Walking Access Consultation Panel (2006) *Outdoor Walking Access: Consultation Document*, Walking Access Consultation Panel, Wellington.