Analysis of Written Submissions on the Report *Walking Access in the New Zealand Outdoors*

ISBN: 0-478-07822-6

June 2004

Contents

page

Foreword

Back in 2002 I was asked by the Hon Jim Sutton to chair the Land Access Ministerial Group (the Group). In August 2003, following extensive discussions, the Group produced its report *"Walking Access in the New Zealand Outdoors"* (and a companion report, *"The Law on Public Access Along Water Margins"* [Hayes]).

I was pleased, therefore, to be invited along with three other former members of the Group to facilitate a comprehensive nationwide consultation process in late 2003, assisted by the Ministry of Agriculture and Forestry (MAF), inviting public comment and feedback on the report.

Engagement in the topic was high and meetings and hui were constructive, with many issues debated at length. The consultation process subjected the report to open and rigorous critique and analysis. All participants had the opportunity to ask questions and take part in discussion with the facilitators and were invited to provide written submissions. These were received into January 2004.

I would like to thank the many individuals, groups and organisations that responded through written submissions with helpful and detailed suggestions, feedback and information, many based on their local knowledge and experience. I was very impressed with the quality, positive nature and comprehensiveness of submissions. Individuals and organisations put considerable effort into providing material, reflecting their depth of interest in the topic.

This document is an analysis of the submissions, rather than a critique of them. It provides an overview of opinions that emerged and an indication of the level of support for the five objectives in the report. Quotes give a "flavour" of the opinions voiced on a particular aspect and show how access problems might be overcome and/or access enhanced. Much detail was offered on the implementation of any policy that might eventuate.

I believe that there is broad support for change, although not all may agree on the extent of this change. I believe that the Group's conclusions and report have been endorsed by most submitters. I consider that this analysis will be a major contribution to the promotion and reinforcement of the popular expectation of access to the New Zealand outdoors, including water margins and the back country.

John Acland
Mount Peel, Peel Forest
April 2004

Executive Summary

The Ministry of Agriculture and Forestry (MAF) received 1,050 submissions on the report, *Walking Access in the New Zealand Outdoors* (the report), prepared by the Land Access Ministerial Reference Group (the Group) in August 2003.

Most views fell into two categories:

Either: A. Protect and enhance the heritage of outdoor recreation for future generations

Vision for access

- Ensure that there is easier, more well promoted access to public land.
- Strengthen and increase the Queen's Chain.
- Access to water margins and public land should be free, reasonable, certain and enduring.
- That access onto private land should be by negotiation only.
- That a reversal of liability from the landholder to the user is appropriate in some situations, as is a statutory code of conduct, if this means that more access will be made available to users.
- These submitters are keen to protect public resources from private capture.

Or: B. Retain the "status quo" relating to access

Vision for access

- There should be a right to say "no" to access to specific people.
- There should be no reduction in private property rights.
- That access to water margins and over private land to public land cannot be achieved without impinging on property rights.
- That the current situation should remain, however, most submitters recommend changes to legislation to reduce landholder liabilities.
- These submitters also desire an enforceable code of conduct.
- A programme to educate the public on their responsibilities when gaining access onto private land is important.
- Most Maori submitters consider that Maori land must be excluded from access because of Treaty of Waitangi rights (Article Two guarantees Maori "the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess").

Category A and B submitters express their concerns relating to access based on previous experience:

- Category B submitters appear to be focused heavily on the possible introduction of the "right to roam" / "wander at will" concept (exemplified overseas), to which they are strongly opposed.

- Category B submitters refer to problems that have occurred when members of the public have access their land and, although they state that permission for access is largely granted, they are concerned that problems would proliferate if more people were able to access land.

- Category A submitters are concerned that public resources (especially freshwater fisheries) are being captured for commercial purposes and that the public is being denied access to them.

- Category A submitters feel that the majority of people should not be denied access because of a criminal-minded minority who would abuse privileges no matter how much or little access was made available to them. These submitters use examples of access having been denied on the basis of potential for criminal activity.

- Both categories are concerned that the New Zealand Walkways Act 1990 has not been implemented well by the Department of Conservation (DOC) and suggest that this is typical of the approach by DOC and local authorities (in respect of use of unformed roads and rivers) to the management of access, especially where it involves access over private land.

- Both categories feel that there is a lack of responsibility for the provision of reliable, accessible and useful access information to the public and that the Government should address this issue and review the order of priorities for Land Information New Zealand (LINZ).

A common vision for access

There are at least six areas that gain support from well over half of all submitters, whether it is direct support or support based upon suggestions and additions to existing proposals suggested in the report:

1. Retention of social conventions

The combined voice of submitters indicates that despite the differences in perception between the extent of private and public property rights, they are keen to embrace their rural connections and to create a heritage that is a source of pride and acceptable to all New Zealanders.

Many Category A and B submitters say that informal goodwill relationships between users and landholders are an important part of any access strategy and this tradition should be upheld where practicable.

2. The "right to roam"

Both categories show little support for pursuing the concept of the "right to roam" (or "as of right" access).

3. Clarity and certainty of information

There is overwhelming support for greater provision of information that is concise, free, regularly updated and easy to locate. This requires bringing together for the public information on the type and location of access that is available, mapping, signage, and contact information. This is information that needs to be available electronically and in hard copy. Both categories feel that many access problems could be resolved if this were addressed.

4. An access agency or an Access Commissioner

There is considerable support for the establishment of an organisation/entity to co-ordinate and take charge of all matters relating to access. Most Category A submitters feel that there has been too much de facto management of access by many government agencies and local authorities but no real leadership by most. In the view of these submitters, these bodies are reluctant to address their responsibilities for access.

5. The Queen's Chain

The Queen's Chain is a concept that is supported by almost all Category A submitters who feel that there should be permanent mechanisms in place to protect this concept for all New Zealanders now and in the future. Many, but not all, Category B submitters do not support any extension of the Queen's Chain if it will affect private property rights.

6. Negotiated solutions

Both categories feel that there is a place for negotiated solutions. Category A submitters consider that compensation is necessary only for maintenance purposes and the provision of facilities, but should not be payable if no property is removed from private ownership.

Background

Analysis of submissions on the report *"Walking Access in the New Zealand Outdoors"*

Establishment of the Land Access Ministerial Reference Group

A Ministerial Reference Group (the Group) was established in January 2003 by the Minister for Rural Affairs to study issues around access to land. The Group was created in response to concerns over the need to clarify and enhance the legal situation pertaining to public access to the foreshore of lakes and the sea and along rivers and over private land.
The Group was well-balanced in composition, comprised of individuals with a wide range of knowledge and experience in areas of tikanga Maori, conservation, recreation, farming, land law and local and central government. It was chaired by farmer and former Meat Board Chairman, John Acland.

The Group engaged in dialogue with stakeholders who have an active interest in access to land policy. Over 230 written submissions were received on land access, as well as presentations by various groups.

The report, Walking Access in the New Zealand Outdoors

The report of the Group, *Walking Access in the New Zealand Outdoors*, was published in August 2003 together with a companion report, *The Law on Public Access Along Water Margins* (Hayes, 2003). Both reports can be viewed at www.maf.govt.nz/mafnet/rural-nz/people-and-their-issues/access/.

Consultation

More than 50 hui and meetings were held around New Zealand following the release of the report and notes were taken at each meeting. The meeting schedule concluded in mid-November 2003. Summaries of comments made at the meetings and hui have been peer-reviewed and are on the Internet at www.maf.govt.nz/mafnet/rural-nz/people-and-their-issues/access/. The summaries of comments and this analysis should be read together to obtain an outline of views. Many people may have attended a meeting but did not make a submission.

Those interested were invited to make submissions on the report and on any other matters related to access by 30 November 2003. This deadline was subsequently extended and submissions were accepted by MAF well into January 2004.

MAF received 1,050 submissions in response to the report. The submissions were summarised, with particular attention to the recording of key opinions, responses to

the report's proposals, themes, useful suggestions, and any important issues which may have been overlooked in the report itself.

Some organisations especially made substantial submissions to the Group in March 2003. They made shorter submissions in this process but referred to, and endorsed, their previous submission. Hence, the analysis of written submissions on the report does not stand alone.

Submissions and presentations were made by individuals, user and landholder organisations, iwi and hapu representatives, Maori Trusts, local government (including city, district and regional councils), government departments and non-governmental organisations.

The submission process helped to gauge the opinions on the report's proposals as well as to gather information, feedback and suggestions from sources of local expertise and experience. This document is an analysis of those submissions, rather than a critique of them. It provides an overview of opinions that emerged during consultation and an indication of the level of support for objectives in the report. This document has been peer-reviewed by the members of the Group who facilitated the consultation meetings and received copies of all submissions on the report.

This document

Content and style

The summary of submissions was formatted according to the chapter headings of the Group's report, so that issues relating to the topic of each chapter appear with that chapter number. As submitters' views and comments did not necessarily follow the report's format, and many of the issues are referred to repeatedly throughout the report, there may be some variation as to which issues are ascribed to which chapter number. For example, comments regarding private property rights would generally be listed under Chapter 5 "Discussion on Property Rights", but may alternatively be listed under Chapter 9 "Access onto Private Land", as this theme links in with both these chapters. Care has been taken to ascribe the themes as consistently as possible.

Emphasis is placed on the range of views presented, and the comments supporting these views, rather than on the numbers advocating a particular position. Counting is difficult as some of the submissions represented a single voice, while others carried the formal mandate of many. The diversity of responses also made counting difficult. For example, some submitters commented on only one specific aspect of an issue or may have supported some points while disagreeing with others.

An indication of the level of support for various positions is, however, useful. Accordingly, this document uses everyday language such as "a few", "some", "many", "most" and "almost all" to convey how widely held a particular position might be.

Quotes are used to give a sense of the submitter's voice. Care has been taken not to alter the original intent of the statement, nor to take statements out of context. In the interests of privacy, individuals' names are not supplied.

It is important to note that quotes give a "flavour" of the opinions voiced on a particular aspect. They may represent a few or, indeed, many opinions on a topic. Ideas that have not been quoted do not have any less interest or value. It is simply that a few were selected to reflect a common view on many interesting ideas and topics relating to access, particularly how access problems might be overcome and/or access enhanced. These ideas are welcomed. Many innovative solutions are pertinent to the implementation of any policy that might eventuate.

1 Introduction

Key points made in submissions

- There is a high degree of consensus among submitters who commend the work of the Land Access Ministerial Reference Group and state that the report is balanced and focused.

- The Minister for Rural Affairs is complimented for addressing the increasing difficulties and conflict around access to the outdoors.

- Several submitters expect that publication of this report means that the Government will address the access issues referred to in its outdoor recreation policy.

- The interpretation of access as applying to pedestrians (walking only) is queried and some submitters feel that it should include vehicles and bicycles.

- There is some concern expressed as to whether there are sufficient access problems to warrant government intervention.

- A few submitters express concern that the report appears to be "biased" in favour of the recreating public.

Background from the report

The principles, values and concepts established by our Maori and Pakeha forebears continue to shape a uniquely New Zealand identity. Maori concepts involving land, water and resources have a particular set of values and concepts that are bound in whakapapa (genealogy) and customs relating to place, resources and tradition. This gives rise to the term "tangata whenua" or those who hold the customary rights to a given place and its natural resources.

[…] Active participation in outdoor recreation brings personal, community, economic and environmental benefits. Many New Zealanders believe that their opportunity to freely visit these areas is synonymous with being a New Zealander. New Zealanders view themselves as a free, rugged, independent, outdoors people. The annual migration in the summer to the beaches, lakes, rivers, bush and mountains reflects this culture. The outdoors provide opportunities to explore new places, and experience solitude, challenge, adventure and new perspectives on space and time. It is this image that is celebrated and promoted around the world, helping to create a thriving tourist industry. *(Page 2)*

1.1 Commend the work of the Land Access Ministerial Reference Group

Most submitters strongly advocate the work of the Group and its report. These submitters feel that the report is very informative, well-researched and well-put together and compliment those involved in its production.

> *"Well done! In my opinion this is an icon of commonsense and clarity unlike some other papers I have read."*

> *"The report of the Land Access Reference Group cannot fail to become a document of great historical significance to New Zealand."*

> *"I must admit to the relative novelty of writing a submission that so completely supports a proposal."*

According to these submitters, the report states the case relating to walking access in the New Zealand outdoors clearly and concisely. The report clarifies the situation with respect to the rights and responsibilities of land owners and the general public with respect to access to private and public lands. Submitters consider that the report will provide a sound basis for deciding on how to ensure access to the coast, rivers, reserves, historic sites, conservation land, national parks and outstanding landforms in the future.

> *"[The] report focused on most of my concerns for public access and also fairly represented the subject from a landholder point of view."*

> *"I am impressed that a report has finally identified so many issues of important to so many New Zealanders. These issues are fundamental to what I and my children, identify as 'The Kiwi way of life'. I am impressed with the report's acceptance that we are all guardians of our natural resources and not 'owners' […] The report, if followed through, allows us to restore the harmonious relationship between land owner/occupiers and recreational users that operated in my youth."*

1.2 Compliment the Minister of Rural Affairs on this initiative

Submitters writing in support of the report feel that the Minister for Rural Affairs has shown initiative by testing the validity of the problem "whether there is sufficient certainty, information, mechanisms and awareness of expected conduct to ensure responsible public access to waterways and private rural land while providing for private land use, both now and in the future".

> *"I would like to start by complimenting the Hon. Jim Sutton on recognising that there is a growing public access problem in New Zealand and on his initiative to do something about it before it gets out of hand."*

"I wish to compliment Jim Sutton for recognising and bringing the issue of land access into the public forum for review."

Many submitters, both landholders and users, consider that enjoying the outdoors should be cherished and protected for future generations. The report has generated much discussion and debate on the best way to maintain this national heritage.

"I agree with the idea of the Queen's Chain developed and extended, since assured access to the coastline, lakes and rivers is one of the great benefits of the New Zealander."

"Federated Farmers sees no reason why the underlying ethos of the Queen's Chain should not be embraced, while at the same time maintaining property rights."

1.3 Labour Party's outdoor recreation policy

Many references to the New Zealand Labour Party's outdoor recreation policy are made by submitters hopeful that the publication of the report means that the Government will address its statement that New Zealand's unique natural heritage offers a wide range of exciting recreational opportunities from the mountains to the sea, opportunities that must be accessible to New Zealanders of all ages and lifestyles.

"It is expected that the current government will honour its commitment to their outdoor recreational policy by making the appropriate legislative provisions within this term of government."

"Labour stated that they would develop a public access strategy, including the extension of the Queen's Chain and provision of rural and urban walkways to ensure New Zealanders have ready and free access to our waterways, coastline and natural areas."

1.4 Focus on 'walking' access in the terms of reference

Some submitters interpret access more broadly to include access by other means, such as vehicles and bicycles. Several submitters do not indicate their support of additional modes of access, yet feel that they should have been considered in the terms of reference to properly investigate all matters relating to access. Chapter 11 covers non-walking access in greater depth.

"[C]onsider the larger picture and adopt an access strategy for all forms of access including walking, horse riding, biking and 4WDing. I consider that it is not appropriate to just consider walking access and put these other legitimate recreational people in the "Too Hard Basket". You must look at access in its entirety once and for all."

"Proposals are confined to walking access only. A full spectrum of access must be considered at local levels to suit local needs."

1.5 The extent of access problems

A few submitters do not believe that there is a general need for greater access and are unaware of access problems in their region. These submitters are reluctant, therefore, for government intervention or statutory solutions. In most cases, these submitters feel that problems can be addressed at a local level using existing landholder and user groups. Chapter 10.1 covers local solutions in greater depth.

> *"It is our thesis that the demand for access to the outdoors is vastly over-stated […] But over all and by almost all overseas comparisons, New Zealand has more than adequate open space resources".*

> *"We do not believe that there are sufficient access problems to warrant such a top down approach."*

Some user submitters assert that there is a growing divergence between the expectations and understanding of those providing and those demanding public access.

> *"In total, the Council has identified and mapped 69 coastal areas with local or regionally significant values – this covers approximately 33% of the Taranaki coastline. In terms of the quality of access to these areas it is noted that 42% of these areas were ranked as having poor public access."*

1.6 Perceived bias in the report

Concern is expressed by a few submitters who feel that the report seems to be "biased" in favour of the recreating public. Several of these submitters also consider that the report based the conclusion over loss of access to land largely on anecdotal comment from a "relatively small" number of situations. A few submitters stated that the report does not quantify the perceived loss of access nor does it balance losses against known gains.

> *"[I] am disappointed by the heavily one sided approach to the issues regarding private land."*

> *"Federated Farmers is strongly critical of the report. The Federation believes that many of the conclusions drawn from the submissions are not balanced or valid […] No attempt has been made to verify the reported access problem whilst other comments relating to the extent of available access have been ignored".*

Some user submitters do consider, however, that access opportunities in New Zealand are finite resources under continually increasing pressure. This, inevitably, will lead to problems and these submitters consider that the report has accurately portrayed concerns relating to access.

"Access problems seem [to be] on the increase both from the viewpoint of those seeking access and from the viewpoint of those supplying it. To some extent these problems may be cushioned by the goodwill of landholders, but this is also a finite resource which is becoming used up."

Many user submitters consider that the report is balanced and focused. A few submitters, including landholder submitters, believe that the issues relating to walking access covered in the report are being unfairly represented by some landholder organisations.

"I wish to give my support to the Land Access Review Group, considering, as I do that their report is balanced and constructive. I agree with their findings".

"I would like to see some genuine discussion of the [topic] by Federated Farmers and a few positive suggestions. The current attitude is hard-line denial of any problem, demand for commercialisation, talk of property rights etc. All this sounds like right wing America, and I don't think [it] really reflects the attitudes of most members […] There is room for genuine dialogue on this subject. It may well be that those farmers most used to providing access are the most receptive to positive moves which clarify the situation for both sides."

2 The Characteristics of Access

Key points made in submissions

- The chapter on the characteristics of access generated significant comment. Many submitters consider that New Zealand has a unique legacy of freedom of access to the outdoors that needs to be protected for future generations.

- Most landholder submitters state that the traditional social convention of the public requesting permission for access onto private land still works well but many user submitters, and some landholders, consider that restrictions on access are becoming more frequent.

- Both landholder and user submitters agree that intensification of, and changes in, land use can result in restricted access.

- Many submitters are concerned that changes in land ownership and foreign ownership are causing access issues for all New Zealanders.

- Some landholder submitters feel that the urban public's connection to and knowledge of rural New Zealand has been lost.

- A few landholder submitters believe that there is increasing pressure for access from urban New Zealanders and around peri-urban areas.

Background from the report

There are quite differing views within New Zealand society on whether there is currently a crisis with regard to public access to the foreshore, lakes, rivers, the bush and mountains. Based on all that the Group has seen, heard and read, it believes that the face of public access in New Zealand is undergoing change and being increasingly restricted, to the detriment of many New Zealanders seeking access and those who support the concept of open access. The social conventions that have provided the platform for obtaining public access from landholders are under increasing stress. *(Page 5)*

2.1 Heritage of freedom of access to the outdoors

A large number of responses were received on this Chapter. Many submitters refer to the way of life in New Zealand of access to the outdoors and to natural resources and the need to protect this for future generations. Submitters also consider that walking access is a critical element in the character of the nation, combined with a diverse natural environment that sets New Zealand apart from the rest of the world. This is particularly the feeling of anglers.

"[T]he concept of free access is the cornerstone of what New Zealand is all about, not only for New Zealanders but also for visitors. Clean waterways with easy access is part of what New Zealand is renowned for, it's certainly part of the reason I love to live here. I hope my children and grandchildren will look back and thank us for protecting their rights of access."

"As a New Zealander I am proud of and enjoy our wonderful environment. I believe it is the birthright of all Kiwis to have access to and care for it."

"We must maintain our popular expectation of unrestricted access to and along our waterways. A point almost unique to New Zealand."

Overseas visitors also acknowledge the unique nature of New Zealand's outdoors and the need to protect it in perpetuity.

"During my days of fishing in New Zealand I have been struck by the excellent access to streams and rivers (I fish primarily in Southland). I have also been very please with the welcome I have received from farmers and landholders I have asked for access. I have never been turned down. I have however found sections of rivers that were inaccessible due to posting. In each case these postings have been on or near fishing lodges. There is no question for me that traveling to New Zealand centers on good access to streams and rivers. No matter how good the fishing is I won't travel to New Zealand to fish unless I have good access to the streams […] I'm reaching the age where access will no longer affect me, but I feel it is crucial that my grandchildren and the grandchildren of all New Zealanders have the same access I have enjoyed."

2.2 Requesting permission – a traditional social convention

Most landholder submitters state that the traditional social convention of the public requesting permission for access onto private land works well. In their view, this "outdoor etiquette" forms the basis for goodwill that has been a long-standing part of the landholder – user relationship. Individuals such as anglers and hunters seeking access onto private land value the connection that they have with landholders, which can involve several generations of a family recreating in a particular location over time.

"[T]he current arrangements for obtaining access to private land have worked well in almost all areas. There is at present a willingness of land owners to allow access to responsible people".

"I can only recall 2 occasions when access has been refused onto private land. Genuine requests from responsible people to landholders for reasonable access are almost always met with cheerful permission and often advice and assistance. For this I am grateful".

It is the new generation of users, according to some, that does not always understand the need to request permission. In addition, goodwill can be further eroded as

landholders incur costs when permission is abused or when irresponsible behaviour occurs on their properties. Chapter 6 covers landholders' and users' concerns in greater detail.

Some landholder submitters themselves recognise that access for recreational users is being restricted.

> *"I find that more and more landholders are trying to deny access through their land on these tracks and roads to areas of DOC estate. I object to locked gates on legal roads. Some landholders are stating that these roads are closed and refusing access. Most of these roads have been formed and used by the early settlers. They have since been abandoned but are still clearly visible."*

> *"The current situation is not perfect, but works OK most of the time. The problem is that public access, whether through new owners or changing attitudes of present owners, is being restricted in a number of situations where access used to be freely given. This is particularly acute in the SI high country where some new owners are denying tramping access in well known and scenic areas […] I see both sides – I am a regular tramper, and occasionally hear the stories of arbitrary denial of access in situations where access would be harmless. This does not help farming's image."*

Most user submitters state that restrictions on access onto private land are becoming more frequent. There are different reasons suggested for this, including the increased number of absentee or multiple owners (which makes it difficult to request permission), changes in land ownership, land use change and the growing number of smaller lifestyle blocks.

> *"In general I have experienced very pleasant relations with land owners and lease holders. However, over the past ten or more years I have experienced a greater reluctance on the part of some land holders or lease holders to permit access to trout waters within their leasehold (or freehold) land."*

2.3 Changes in land use

Restricted access can be the result of intensification in land use, state both landholder and user submitters. Diversification away from traditional land uses to viticulture, deer farming and cropping, for example, has been necessary for some landholders to seek further income. In other cases there has been an increase in the number of rural businesses such as retreats, garden tours and walkways.

> *"[C]ommercial pressures on land usage and natural resources are creating increasing conflict between landholders and outdoors recreationists."*

> *"I am now less enthusiastic about inviting strangers onto our land for the following reasons: our land use has had to become more intensive and we now run bulls and grow avocados […]".*

Many user submitters refer to landholders utilising adjacent public resources for commercial gain. There is a steady trend of tourists who pay for exclusive access to hunting and fishing (Chapter 6 covers exclusive capture in greater detail). Submitters assert that this is an increasing concern where game farms or safari-type farms/clubs are established, blocking access to publicly-owned conservation land behind. Rural tourism may also extend to ventures around sites of cultural significance and activity.

> *"His first statement was that we were trespassing on private property and had no right to be there. He informed us that this was his river and that as such was part of his livelihood as he derived income from it that helped pay the mortgage. If I wanted to fish it I had to pay for the privilege, and line up with the guides who had priority".*

2.4 Changes in land ownership

Changes in land ownership are considered by many submitters to be causing access issues for all New Zealanders. New owners, in particular foreign landholders and landholders with an urban affinity, bring with them different access traditions and concepts of property ownership. This may result in access being denied where in the past it was regularly made available upon request. Different expectations regarding access contribute to the loss of goodwill relationships and mean that access is uncertain upon land transfer.

> *"Areas I have hunted for over 30 years are slowly being closed to recreational hunters. I rang seven property owners recently along one range in the central South Island, to see if I could hunt big game, all said 'no'. Some of these properties I had been given access to in the past, but as ownership changed, so did the access."*

> *"[O]wners of private land, and particularly foreign owners, have increasingly appropriated for themselves and for private profit, hunting and fishing rights on public land by denying any practical access to the public."*

2.5 Urban and rural private land

The urban public's connection to, and understanding of, rural New Zealand has been lost as the urban population base grows, according to some landholder submitters. A few user submitters also note that family ties with the rural community are breaking down, especially as some rural areas depopulate. The rural area may be seen as a place for recreation only, rather than a working environment and the general public today does not always belong to recreational groups who maintain formal or informal codes of conduct. There may not necessarily be the same linkages with a specific landholder as was the norm in the past.

> *"In the past a large part of the New Zealand population lived in or has family who lived in rural New Zealand. In these circumstances the public both had knowledge*

of where they could go and how to behave. As the New Zealand population has moved to the cities this connection has been lost."

"With a more urban population, a lot of the etiquette that should be used when in the great outdoors is being lost."

A few landholder submitters believe that there is increasing pressure for access from urban New Zealanders and around peri-urban areas. This pressure is augmented as distance is no longer a barrier to recreation due to factors such as more disposable income and better cars. Considerable time may be spent managing access on a farm.

"This peninsular [South Kaipara Head] is both remote yet within easy access to urban Auckland. Increasing pressure of people […] can be extremely threatening to our local people."

"The [Auckland] region currently has a population of 1.2 million people. Latest projections indicate that the region's population will increase 36 per cent by 2021 to 1.65 million. There will also be significant changes in the make-up of the population. Associated with these changes will be further urban expansion and intensification. As housing density increases, Aucklanders will tend to have less private open space. This will place a greater need and demand on public access to public open space."

"[U]rban encroachment adjacent to Whitford forest in Auckland where intensive urbanisation adjacent to it may be incompatible with the noise, transport, and hours of operation of commercial forestry. Regulation including RMA and increasingly OSH legislation constrains forestry operations in such situations. Conversion of unprofitable forest to an alternative land use, including lifestyle subdivision, may lead to changed expectations with respect to access."

3 Arrangements for Access in New Zealand

Key points made in submissions

- Many submitters consider that policy guidance on access given to government agencies (at all levels), such as the Resource Management Act 1991 and the New Zealand Walkways Act 1990, is not being interpreted or enacted satisfactorily.

- Most landholder submitters feel that guidance given to them should do more to protect their rights.

- Many user submitters state that the Trespass Act 1980 is too strict and treats recreational users as if they are criminals.

- Some submitters stress that the tradition of non-statutory codes of conduct should be maintained and strengthened.

- A few submitters, mainly Maori, refer to the specific access arrangements on Maori land and the role of the Treaty of Waitangi in relation to property.

Background from the report

New Zealand's arrangements for public access have three dimensions. Maori hold land tribally.

The second dimension is that of the European, where statute determines the provision of, and access rights to, lands. Legislation provides for rights of access onto land for a variety of reasons other than recreational access (mining exploration, emergencies, utilities).

Legal public access for walking and other passive recreation is comprised of eight basic types of reservation including roads, esplanade reserves, marginal strips and access strips.

In addition to the statutory regime, there is a small but developing regime based on codes of conduct. *(Pages 14-15)*

3.1 Guidance given to government agencies

Resource Management Act 1991

Many submitters consider that government agencies, including local government, are not performing their access functions as required by the Resource Management Act (RMA). Chapter 7 covers section 6(d) of the RMA in greater detail.

"One area that could be promoted is to ensure that access is included within state of the environment reports and plan implementation reports prepared in accordance with the Act. Investigation could be undertaken into the extent to which local authorities are using their ability to waive requirements for reserve land/strips in the subdivision process."

New Zealand Walkways Act 1990

Some user submitters indicate their enthusiasm for retaining/promoting the concept of walkways but are concerned that the New Zealand Walkways Act and its potential are being neglected under management by DOC. Most of these submitters consider that the Act is a useful tool, as its intent is to establish walking tracks over public and private land so that New Zealanders have safe, unimpeded foot access to the countryside for the benefit of physical recreation, enjoyment of the outdoors, natural and pastoral beauty and historical and cultural qualities of the areas they pass through. Walkways under this Act are established and administered whilst respecting property owners' rights. These submitters consider that the Act has potential if promoted properly. Chapter 10.1 covers the Walkways Commission in greater detail.

"The Group does not appear to have fully appreciated the importance of the NZ Walkways Act in providing public walkways over private land and the tragedy of their slow descent into oblivion under the auspices of the Department of Conservation, the Conservation Authority and the Conservation Boards."

"I felt that the old 'Walkways Commission' and its supportive committees were a wonderful way of working with local landholders. I tried to convince Nick Smith (then Min of Cons.) of this but could not move him from the view that DOC covered this function. It does not and never has."

3.2 Guidance given to landholders

Most landholder submitters feel that guidance given to them should do more to protect their rights. Chapter 10.5 covers recommendations to reverse liability provisions under the Health and Safety in Employment Act 1992 (HSEA) and the Forest and Rural Fires Act 1977. In general, most landholders consider that they should not be held accountable for the actions of users on their property. Most users agree with this transfer of liability in return for access onto and across private land.

"Amend [...] the OSH legislation to make land occupiers not liable for persons recreating on their land, including walking access across it to get to public land. Absolve land occupiers from liability for rural fires caused by outdoor recreationalists."

"I'm aware of how modern NZ law has directly contributed to diminished access through liability concerns (e.g. OSH, Rural Fires Act, right to sue etc etc), leading to the requirement for access permits. Putting the legal liability back on the accessee rather than access provider may help remove these impediments."

A few landholders state that they are also concerned with liabilities under the Crimes Act 1961 (for anything that they make, erect or maintain that may endanger human life) and the Occupiers' Liability Act 1962 (imposes a common duty of care towards all visitors who enter private property).

> *"Both the HSE Act and the Crimes Act include the power of the Courts to impose significant financial and imprisonment penalties. Civil Liabilities – The Occupiers Liability Act imposes civil liabilities on farm owners who have the express or implied permission of the farm owner to be on their land."*

3.3 Guidance given to the public

Many user submitters note that the Trespass Act is very rigorous. The offence of trespass occurs after a trespass notice has been served on a person(s) in accordance with the Act. Users are concerned that they may be accused of trespass on private land if they unknowingly leave a designated accessway. Submitters state that most genuine recreationists do not act with criminal intent. Users feel that there are occasions where landholders use the Act to bar access across private land to public land or on public land such as unformed roads.

Proposals suggested by users to overcome these perceived problems include provide a defence based on reasonableness; that the offence of trespass be decriminalised and made a misdemeanour; and a suitable defence where a user is undertaking a reasonable recreational activity.

> *"Changes to the Trespass Act to reduce its severity and to address the exclusive capture issue are supported."*

> *"The current criminal trespass law in this country is draconian, and there seems no reason why there should not be a return to the civil trespass regime for open land that existed prior to the 1960s. These provisions continue to exist in England, such a move would not limit the availability of landholders to order trespassers off, and to expel those who decline to leave. Irrespective of its status as a criminal offence or civil tort, it should be a defence against an allegation of trespass that the person had a reasonable belief that they were on a legal accessway."*

3.4 Non-statutory guidance

There is a tradition of non-statutory codes in New Zealand that have been developed by some outdoor recreation organisations. A few submitters refer to the New Zealand Environmental Care Code and codes specific to fishing, hunting and mountain biking. These codes promote goodwill relationships between landholders and users and assist in the negotiation of access onto private land. Those organisations with codes are proud of their development and endurance over the years.

It is of concern to both landholder and user submitters that as the membership of recreation clubs declines and links to rural areas are severed, the use of non-statutory

codes will diminish. This could result in increased tensions as new users are unaware of how to behave on private land. Many of these submitters recommend, therefore, that a statutory code of conduct be part of any future access strategy. Some landholders do not consider that a code would make any different to the behaviour of users. Chapter 10.2 covers recommendations for a code of conduct in greater detail.

> *"We believe that most reasonable people already follow an informal Code of Conduct when visiting private property, and know what behaviour is appropriate."*

3.5 Access arrangements on Maori land

A few submitters, primarily Maori (iwi and Trusts) refer to the specific access arrangements on Maori land.[1] Most Maori seek to protect the exercise of customary rights and the protection of customary sites and resources. Most Maori submitters assert that the Crown as a Treaty partner has an obligation to actively protect the property interests of Maori land.

> *"Article two of the Treaty granted 'te tino rangatiratanga…o ratou whenua o ratou kainga me o ratou taonga katoa', or the 'full and undisturbed possession of their lands and estates fisheries and other properties'. This article therefore guarantees Maori the right to determine access to their land."*

> *"[Iwi] has a strong and positive relationship with the Crown expressed in various agreements. Mostly we see these arrangements as being the nature of partnership arrangements that have been achieved as a result of negotiation and agreement and never compulsion. It is most important that this principle be carried over in relation to any public access to our waterways. Any legislative access without our consent would cause massive damage to our relationship and we cannot imagine that the Crown would contemplate such a course."*

Some submitters state that public access poses governance issues for Maori landholders. For the majority of Maori land, neither trustees nor owners are resident on the land in question, therefore they are not able to directly control the access themselves.

A few submitters consider that public access hinders economic development opportunities. The land is a wealth-generating asset for Maori and public access may disrupt or constrain activity. Some Maori are concerned that further access may result in the desecration of burial sites or waahi tapu. Some submitters note that mahinga kai is already being pillaged by members of the public.

> *"The deeming and statutory trust approaches are authoritarian use of the powers of the State when other methods are available. I suspect and hope that the authoritarian socialist confiscatory approach is no longer acceptable to New*

[1] Many Maori attended workshops and public meetings held during consultation but did not make written submissions. A summary of the comments made during Maori workshops can be viewed at www.maf.govt.nz/mafnet/rural-nz/people-and-their-issues/access/.

Zealanders. When carried out against Maori land in the 19th century this caused grievances which still persist and show little signs of going away."

Should private land be vested in the public, some Maori submitters recommend that there be mechanisms in place to mitigate abuse, to protect cultural values and to regularly review access arrangements. These submitters favour negotiated solutions. The Crown should provide public funding or compensation for land that has been vested in the Crown. Some support administering access arrangements at a local level, with those holding manawhenua charged with consultation and decision making roles. It is necessary to build relationships with tangata whenua, also at a local level.

A few submitters note that there are large areas of land-locked Maori land that should be accorded greater access. Some Maori find it difficult to access their own burial sites.

"There have been suggestions of access requirements under a similar framework to that provided for in s 340 of Te Ture Whenua Maori Act 1993 – where when partitioning land under certain circumstances a '…Maori reservation…held for the common use and benefit of the people of New Zealand' may be required. The circumstances triggering this requirement should not be extended by legislative agreements."

Some Maori submitters suggest that there be more education about public access and Maori land ownership. Some submitters indicate, however, that they do not want information regarding customary sites to be released.

"[S]upports clarification of access issues particularly where it enhances access for tangata whenua and protects significant sites from inappropriate use."

Some submitters state that Maori land should not be considered to be different from any other private land. Many of these submitters feel that it is important that people acknowledge that non-Maori landholders also have an affinity with the land and high regard for property rights.

"Imposing a Queen's Chain over Maori customary land would be contrary to Queen Victoria's instructions and as such would create a bad precedent. But if you want to have a more equal society this would be necessary, all citizens own a Queen's Chain."

Other submitters feel that Maori land should not be exempted from any legislated extension of the Queen's Chain ethos.

"Maori land should be treated no differently to other private land. In the case of sports fish, game birds and large game, practically all the species involved are introduced species, and as such are not recognised by the Treaty of Waitangi."

4 Public Access Arrangements in Other Countries

Key points made in submissions

- There is widespread agreement that there is a need to preserve the attractiveness of New Zealand as a destination due to its unique access traditions and opportunities for outdoor recreation.

- Where public access arrangements in other countries are discussed, many references are made to the extensive walkway system in England as a successful model for public access.

- A few submitters state that little or no guidance should be taken from European access models as New Zealand has different cultural and societal traditions.

Background from the report

In contrast to the largely statute-based access arrangements in New Zealand, a markedly different approach to public access is found overseas. An influential factor in considering access arrangements in other countries is that the rights and traditions embodies in either formal rules or social conventions reflect the society in which they exist.

In Europe (including Scandinavia, Scotland and England), the arrangements have formed in a society that has well-established expectations for access across private land and has experienced only gradual change in farming systems. While the principles of respect and responsible access are an integral part of society, the systems are not without pressures, such as increasing urbanisation with little public land available for outdoor recreation. To this end, some countries have chosen to codify in statute the common law that governs public access. *(Page 24)*

4.1 New Zealand as a recreation destination

Most submitters are of the opinion that New Zealand needs to preserve its status as an attractive destination due to its unique access traditions and opportunities for outdoor recreation.

> *"There are some countries that have wonderful fishing and hunting opportunities, so long as you are willing to pay dearly for the privilege. I do not hear many of my fellow anglers or hikers talking about going to those countries to recreate. But they do talk about going to New Zealand because of the warm hospitality of your citizens, and the outstanding fishing and tramping possibilities and the easy access to those resources."*

"As an immigrant from Switzerland, I know how fortunate I am to enjoy New Zealand's wonderful nature. One of the reasons I chose to live here was the opportunity to access the land with respect to the owner. To lose this freedom would be terrible."

Some submitters refer to the restrictive characteristics of access in other countries such as Germany, the United States of America (USA) and even Australia to emphasise New Zealand's access heritage and the need to protect it from commercialisation.

In the USA, several submitters state, waterways have gradually become a privatised resource. Problems have arisen from land being leased and access restricted by wealthy individuals and lodge owners turning land into "pay to recreate" areas rather than from landholders who want to restrict access per se to their land. A submitter notes that the fear of being sued is another hindrance to access to land in the USA.

"I have lived in the USA for four months each year for the past eight years and have witnessed wealthy Californians buying Montana ranches with trout streams and closing all access or charging exorbitant daily fees to fish."

"During my 60 years of fishing I have seen the access situation here in the U.S. change dramatically, and not for the better. Access to many, and maybe I should say most, streams in the U.S. has been restricted by landholders […] wealthy individuals and lodge owners."

4.2 Access arrangements in the United Kingdom

The extensive walkway system in the United Kingdom is perceived by many submitters on this chapter as a successful model for public access. A few submitters note that walking in England is a major recreational activity. Over time, common rights of way in England have become a system of well-maintained footpaths and bridleways. The network of rights of way is planned in consultation with recreationists and landholders and with attention to the lie of the land. Access is laid out along sensible routes.

"Many of our members have visited England and relished the walking opportunities afforded by its historic public footpath network. Here in New Zealand walkers seem to be restricted to walking along the sides of roads, or up wide riverbeds."

"I agree with the 5 objectives put forward by the Reference Group but I believe that we do not have to re-invent the wheel as far as public access is concerned but draw upon the British "Public Rights of Way" system that has endured for a thousand years. We would need to just massage the British system to suit the New Zealand situation".

One submitter notes that considerable rights of access to the countryside and enjoyment of the environment contribute to the maintenance of property values in

rural England. Another submitter considers that the English model has a well-established expectation for access across private land but limits the right to defined routes and track areas, such as lake frontages, along rivers, to historic sites, lookouts, geological sites or other recognised features.

A few submitters suggest the Scottish Land Reform Act 2003 as guidance for foot access in New Zealand. These submitters consider that the system should be looked at for its safeguards, which address most access problems, rather than portraying the legislation as the "right to roam". The Scottish Outdoor Access Code is based on a balance of rights of access and responsibilities and laid down by statute.

> *"How access could be strengthened: '[R]ight to roam or responsible access to all land similar to the Scottish/German/Norwegian models. This could be amended to suit different land uses by the code of conduct."*

> *"I note that the consultation paper dwells extensively on the strong influence of 19C Scottish legislators on the current situation. It is not surprising: Scotland still has a similar mix of urban areas, arable and pastoral farming, wilderness and forest, with similar demands from land owners, urban populations and tourists […] [I] would welcome similar legislation here."*

A submitter feels that many of the farm management reasons for closure of all access in New Zealand (e.g. lambing) do not appear to be as much of an issue overseas, where they occur successfully in areas of open access, although dogs and vehicles would be either under close control or excluded.

> *"Use of this legislation [Scottish Land Reform Act] would greatly enhance recreation and tourist opportunities without discriminating against any particular land owners, thus avoiding the problems of land ownership and Treaty issues."*

4.3 Little guidance from European models for access

A few submitters state that little or no guidance should be taken from European access models as New Zealand has different cultural and societal traditions which would not support the right to roam over a defined area. One submitter feels that unlike in England, the ability to purchase a rural property is within the reach of all New Zealanders, so more structured public walkways are not so necessary. A few submitters consider that while international examples are useful, an indigenous solution is required.

> *"The writers recently walked a few 'public' walkways across the English countryside. Quite obviously the historic context of ancient passage rights, population pressures and other more extensive private property rights (such as ownership of fishing rights) do not translate easily to the NZ situation."*

> *"The report emphasises the need to develop a strategy appropriate to New Zealand's particular social, cultural and traditional conventions. Therefore, we*

are at a loss to understand the time and attention devoted to investigating access arrangements in predominantly European countries."

A few submitters note that access arrangements in other countries are inappropriate models as farming is subsidised and, in effect, the public pays through contribution to subsidies for the right to rural public access.

"These subsidies allow more manpower per property to manage their farming business, the impact of public access, and associated responsibilities. New Zealand farmers however are one of the few farming communities in the world who stand alone without subsidies and run a true agribusiness without outside contributions. It would be unfair on them to apply overseas rules without the full package. Compare apples with apples not apples with pears."

5 Discussion on Property Rights

Key points made in submissions

- The majority of submitters on this chapter assert that freshwater fish and wildlife do not attach to land title but are part of the public estate.

- Although many are favourably disposed to granting access subject to conditions and/or a right of refusal, the majority of landholder submitters want the right to say "no".

- Most landholder submitters perceive that greater provision of access on private property will result in the loss or erosion of property rights.

- Most landholder submitters consider that any "taking" of private property rights should result in compensation but users feel that compensation is unnecessary if property rights are not removed.

- Most Maori submitters believe that access will create governance issues and the Crown as a Treaty partner is required to protect the property interests of Maori land.

Background from the report

Tangata whenua considered that access created governance issues for Maori landholders and that the Crown as Treaty partner had an active interest in protecting the property interests of Maori land. Landholders and landholder organisations considered that greater provision of access on private property would result in the loss of property rights. On the other hand, some user organisations and submitters considered that public access did not adversely impact on property rights and no loss would occur. *(Page 29)*

5.1 Freshwater fish and wildlife as public property

A very large number of responses on this chapter assert that freshwater fish and wildlife do not attach to land title but are part of the public estate. These submitters consider the argument that landholders will lose their property rights to be invalid. Rather, the denial of access by the public to a fishery, they state, is a de facto private confiscation of a public property right. Submitters recommend that property rights be untangled from access rights.

> *"Fisheries, wildlife and water under New Zealand law are not part of the title to the land. Land occupiers have no property rights over them."*

"I also urge you to reject any notion of 'property rights' which assumes title to the public domain; specifically wildlife, fisheries, shallow aquifers and the water of natural waterways. It is a foundation principle of the Kiwi identity that these resources should be reasonably and responsibly available to all as of right".

Some submitters are concerned that more landholders will be persuaded by private operators to close their land for commercial benefit and prevent public recreational use and enjoyment of the resource (Chapter 6 refers to exclusive capture in greater detail). User submitters state that it is not unreasonable to expect reasonable access to all public land and that other rights can co-exist with a landholder's rights. A few submitters state that farmers may legally own land title, but that they are only guardians for the next generation.

"I am impressed with the report's acceptance that we are all guardians of our natural resources and not owners".

5.2 Right to refuse access

The majority of landholder submitters (most of whom are favourably disposed to granting access subject to conditions and/or a right of refusal), still want the right to refuse access onto private land (the right to say "no"). Chapter 9 covers the right to refuse access in greater detail.

"I have no problem with allowing access, if there is a part of the farm which I do not want disturbed they can be headed in a different direction. It is important that I have the right to negotiate and say no when it is unsuitable."

5.3 Loss or erosion of property rights

Most landholder submitters are concerned that greater provision of access will result in the loss or erosion of their property rights. These submitters feel that property rights are paid for by landholders and that they should not be removed in favour of another group. Landholder submitters consider that the report's proposal will alter property rights and potentially devalue them by removing a right to decide who may access the landholder's property.

"The proposals would coerce private property owners to provide public access to their property, erode private property rights on an unprincipled basis and advance the interests of one group of New Zealanders at the expense of others".

"The undermining of property rights would lead to the undermining of New Zealand's economic base."

Landholder submitters consider that any increase in public rights must be accompanied by the protection of private rights. These submitters feel that property ownership should be guaranteed and, a few suggest, strengthened in the interests of promoting prosperity and social cohesion.

"[Concerned about] my loss of my ability to protect my property rights and the loss of privacy".

A few user submitters note that property rights in New Zealand have never involved absolute rights in common law or statutory law. These submitters feel that property rights are not necessarily absolute and may function alongside other rights.

"In New Zealand law property rights are essentially multi-layered and while the 'owner' may enjoy the majority of the rights other rights can and do co-exist with the 'owners' rights."

"We are concerned about the property rights ethos that has developed in NZ. While we realize that this will not change quickly we think it is healthy that it should be challenged. It is a sign of a civilized society if we share access to natural assets."

5.4 Compensation

Many landholder submitters state that compensation should be given to landholders for any "taking" of private property rights, whereas most user submitters consider that compensation is necessary only for maintenance of accessways and the provision of facilities.

"Should property rights be adjusted in any shape or form, I would expect compensation to be a foregone conclusion of that arrangement."

"If private property rights are taken to provide greater access to the outdoors, just compensation should be paid to affected landholders. The requirement to pay compensation would oblige public authorities to weigh up the value of rights taken against the cost involved and thus provide an important protection against the use of property in low value activities."

User submitters consider that compensation is reasonable where facilities are provided to enhance access (such as huts and toilets, or for maintenance of walkways on private property). Most of these submitters consider that compensation is only necessary if land used for walking access is removed from private ownership. Chapter 10.4 covers compensation in greater detail.

"I am not asking that private land should be transferred to public title, we simply support a right of walking access both to waterways and along waterways. I do not consider that landholders should be offered compensation for this access, as they would not be 'losing' land."

"As 'access without ownership' is not an absolute confiscation in any normal sense, any reasonable scope for negotiation is comparatively minor – perhaps the provision of signage, way markers, fence stiles and route selection (to respect

domestic privacy/curtilage) to facilitate directed and responsible walking access across private land to public/deemed public land."

5.5 Protection of Maori property interests

Most Maori submitters believe that access will create governance issues and the Crown as a Treaty partner is required to protect the property interests of Maori land. These submitters consider that they have allowed access when it has not been a legal requirement and that any change in that relationship would not be supported. Chapter 3 covers access arrangements on Maori land are covered in greater detail.

"Property rights of Maori have already been eroded through the confiscation of land and legislation in particular the Public Works Act. Maori have also gifted land for national parks. To further take away these property rights from Maori despite the gifting of land for reserves, which was done even after copious amounts of land had been confiscated, is a flagrant disregard of the principles of the Treaty, in particular 'to act in the utmost good faith'."

6 Concerns in Access

Key points made in submissions

- The chapter on concerns in access generated a large number of responses. Most landholder submitters raise concerns that more opportunity for access will result in greater risks and problems, illustrating this with a list of issues.

- The main concerns raised by **user** submitters relate to:
  - poor access to information;
  - difficulty in accessing maps;
  - perceived disinterest of local authorities and departments;
  - privatisation of public resources;
  - closure of access; and
  - lack of knowledge regarding rights of access.

- Both landholder and user submitters state that a small percentage of the population abuses access rights, appearing to reduce recreational opportunities for genuine users.

- Many user submitters acknowledge that there can be genuine reasons for restricting access at certain times, but feel that access can also be denied on unreasonable grounds.

- The matters raised most frequently by **landholder** submitters refer to:
  - security and theft;
  - personal safety and privacy;
  - biosecurity;
  - habitat/environmental degradation;
  - threat to conservation;
  - fire risk;
  - health and safety liability;
  - provision of facilities; and
  - impact on forest/farming practices.

Background from the report
The occurrence of an activity in a specific area, in this case access on private rural land (the countryside), has both positive and negative outcomes. Access for walking, tramping, fishing and similar recreation results in health benefits; allows enjoyment of the surrounding countryside; provides an environmental awareness; and enables people to continue traditions and customary use on or beyond the land. The Group heard from rural landholders who are positive about allowing access and who enjoy the interaction with recreational groups and the public. Nevertheless, managing the negative outcomes of access has been, and continues to be, the main concern of property owners, who have to balance the day-to-day responsibilities of their own businesses with providing for those who wish to have access through and over their properties. *(Page 34)*

6.1 User concerns

Poor access to information

Most submitters consider that it is increasingly difficult for the public to find information about legal roads, public rights of access and landholder contact details. This may result in conflicting messages about the availability of access, a matter that both landholders and users agree needs to be improved. This can be difficult, submitters note, when people would like to visit another region to recreate and do not know where to go to get the required information. It can also be difficult when a property has multiple owners.

Some submitters refer to the perceived need for improved signage that clarifies where access points are so that users are less likely to stray onto private property. A few submitters note that signs can be vandalised by the general public or removed by landholder submitters who refuse access.

> *"I am trying to find out who manages an esplanade reserve that could be planted in native plants as part of our environmental programme. I have contacted LINZ who say it is DOC, and DOC says its not them and that LINZ doesn't really know. So how do members of the public check the facts of ownership?"*

Difficulty in accessing maps

Many submitters consider that it is currently difficult to obtain accurate and useful information about access arrangements. The reasons given include:

- some of the maps that are accessible are out of date and that topographic maps do not indicate legal accessways and unformed roads;
- cadastral maps are difficult to obtain and that they are indicative only;
- some access arrangements are only found on individual property titles and not on cadastral maps;
- information is updated on Land*online* but is difficult for non-expert users to access and use);
- the move by LINZ to Land*online*, which emphasises commercial business needs and user pays, has created gaps in general public access to public records (submitters feel that LINZ has a responsibility to provide free maps to the public, rather than it be a cost to the ratepayer to access the LINZ website); and
- local authorities and DOC have not taken as much responsibility as they should for marking access points, and providing information on some forms of access arrangement such an unformed legal roads and esplanade strips.

Submitters would like hard copies of maps as well as an internet service.

> *"[A]ccess rights such as surveyed and paper roads are being lost through inaction and loss of information that used to be available on cadastral maps."*

Perceived disinterest of local authorities and departments

Some submitters feel that the management of access by a number of different agencies, including DOC and local authorities, is deficient, with multiple objectives and varying

capacity to implement access arrangements. A few submitters state that they have found it difficult checking ownership details through these bodies.

Some submitters consider that access rights, such as surveyed and unformed roads, are being lost through inaction and reluctance on the part of local authorities, who also do not actively marking access points. Submitters refer to some councils whom, they believe, are not complying with their legal requirements, especially in the case where unformed roads may be blocked off, unmarked or used for farming purposes by a landholder. A submitter notes that one council has granted grazing licences for land acquired for flood protection purposes as well as two esplanade reserves. Public access on esplanade reserves is now at the licensee's pleasure and as a consequence, a proportion of the river in the local township has no public access despite the land being in public ownership.

> *"The problem lays with local Government. For instance the […] Council in my area has a large rural area under its 'control' and they do not have a good relationship with the local Fish and Game because of [Council] reluctance to protect waterways and habitats. There are large river berm areas that are managed by [the Council] which should be available for recreational gamebird hunting, they have been in the past. Now they lease the grazing rights to these areas with no provision for recreational use".*

> *"The […] Council has recently proposed the sale of an unformed road that leads to a recreational reserve alongside the Little Waipa Stream – an important trout fishery."*

> *"Unfortunately, TLAs often seem unwilling to take action to enforce public rights on roads that have the same status as Lambton Quay or Fenton Street […] We also suggest that TLAs be required to act to remove obstructions, illegal signs and un-signposted gates on the petition of say seven residents."*

Users want there to be a more active duty placed on local authorities to affirm public rights along unformed legal roads (administered under the provisions of Part XXI of the Local Government Act 1974). They also seek better identification and information about this network of roads.

Some landholders and local authorities oppose a move to identify unformed legal roads as they consider that it has the potential to increase land-use conflict (landholders often incorporate the legal roads in their paddocks) and costs for local authorities. For this reason, some local authorities are reluctant to provide information about legal accessways.

> *"The difficulties arise from a local authority having a policy of only maintaining roading to the last ratepayer's gateway. This is based on the need only to provide access to the last person paying rates."*

> *"The 34 public roads that I have identified in the Ashburton County are clear on maps and also on the ground but cannot be used. I think Jim Sutton should be able to make District Councils comply with the law."*

One submitter notes that while it is true that existing legislation allows councils the option to purchase esplanade reserves or strips on subdivisions if the lots are over 4.0 hectares, sometimes this is unaffordable.

> *"Recently an applicant wished to subdivide off a small block of land at a coastal property north-west of Kerikeri. This property contained Onewhero Bay which is approximately 1.45 km long with a due east aspect. It is an attractive and well-sheltered bay with a sandy beach.*
>
> *Kerikeri is a fast growing area that has very little access to the coast if you do not have a boat. Although, several farms have over the years provided informal access through their property to the coast these have been closed in recent times. The opportunity to acquire Onewhero Bay would benefit the residents of Kerikeri by providing one of the finest beaches in the Bay of Islands.*
>
> *A valuation report was provided with the resource consent application. [Someone] assessed the value of the interest in the esplanade strip over the entire title to be $2,125,000 plus GST […] Council's budget for esplanade purchases comes from 20% of reserve contribution payments received from developers. This on average provides a fund of $70,000 per year."*

Privatisation of resources

Many submitters emphasise that although freshwater fish and wildlife do not attach to land title, the sale of hunting and fishing rights has been possible due to landholder use of Trespass Act provisions. By restricting access they obtain "exclusive capture" of these public resources. Some fishing guides are prepared to pay to be granted exclusive guiding rights to a section of a river, which restricts the recreational freedom of individual users. A few submitters state that commercial recreation value is added incentive to buy land, inflating land prices.

> *"For trout fishing controlled access (ie paying for exclusive access) is a surrogate for paying for exclusive rights to a public resource which all fishermen subsidise via their licences".*

Many submitters note that the New Zealand Labour Party states in its manifesto commitments that it intends to ensure that New Zealand's natural recreational resources are not captured for exclusive commercial use but remain freely available for reasonable public enjoyment.

> *"Land occupiers that use the Trespass Act to deny public access for trout fishing are misusing the Act. While it is illegal to sell fishing rights, a loophole exists in the law that allowed the sale of access rights."*

Some submitters consider that the situation of exclusive capture exists in a number of locations in New Zealand. One example provided by a submitter, of the Mohaka River, indicates access issues that include difficult terrain preventing physical use of many sections that have legal public access; and large areas of the prime headwater sections

of the river that are on private land. This submitter states that in most cases the land has been leased to aircraft operators and access is available to paying customers. The submitter adds that in some cases fishing guides have entered into exclusive access arrangements with the landholder.

> "*The [Mohaka] fishery contains 303 km of water*
>
> - *A total of 134 km or 56% has public access*
> - *A total of 169 km or 44% has no public access*
> - *Of the area where legal access is permitted 78 km or 58% has difficult access due to terrain and vegetation*
> - *A total of 114 km or 47% of the high quality headwater section of the river (i.e. including and above […] Te Hoe River) has no public access […]*
>
> *The 2002 National Anglers Survey indicates the Mohaka River receives approximately 7,000 days fishing per annum and is the region's second most popular fishery. Some 14% of this effort occurs in the headwater area. Much of the catchment is not highly modified resulting in a quality productive trout fishery in a highly [sought] after backcountry and remote setting."*

An alternative view is that, as a licence is required for freshwater fishing, freshwater fish cannot be a public resource as access is restricted to licence holders. Some landholder submitters also consider that charging for access or the sale of access rights is a valid tool to recoup costs that may be incurred due to the frequency of user access.

> *"Visitors to the farm impose significant costs on landholders. To offset these costs and to control numbers, charging for access or sale of concessions to specific groups is a valid management tool. It is a well-established tool currently used by both the [G]overnment as well as private landholders […] Having said that, while farm tourism is a growing activity, the vast majority of landowners do not charge casual recreational users for foot access to their properties."*

Closure of access

Some submitters reveal that a few landholders have, either intentionally or unintentionally, obstructed legal roads by the placement of fences, locked gates or other obstacles.

A few submitters believe that local authorities have closed legal roads or marginal strips without giving a reason or adequate warning. Further, these submitters add, local authorities can be reluctant to resolve difficulties when access points are closed.

Access may not be practical due to additional restrictions or the use/activity of the land restricts access. This may apply to ports, esplanade reserves or marginal reserves with a conservation priority. There are cases where access is physically impossible (e.g. a road on a cliff-face). Such circumstances significantly reduce access opportunities on public land.

Access may be prevented for reasons such as lambing, farming activity and sensitive environments. Some users consider that these and similar reasons may be used as an excuse to prevent access where no alternative accessway is provided.

> *"[M]ost of the problems I have come across have involved paper roads. It is common practice for farmers to arbitrarily fence across paper roads and to include the road reserve as part of their farming operations. In doing so they gain a hectare of land for every 500m of road for which they pay nothing, even rates […] Few of the roads are marked as they should be under the Local Gov't Act".*

> *"[T]here is a situation on the seaward side of State Highway 6 (the main north/south road on the Coast) where people have built baches on what is public land. Basically, they are squatters. Some of them have even built fences to keep the public off the property and prohibit access to the foreshore."*

Lack of knowledge of rights of access

Some submitters state that members of the public are unaware of what their rights of access are and consider that many conflicts regarding access could be resolved if all concerned parties were better informed of their rights and where permission is necessary. One submitter states that poorly defined legal access is the main factor contributing to inadequate public access. A few submitters note that people are intimidated because they are not sure of where they have a right to legal access.

These submitters note that local authorities should be required to act to reduce the misinformation problem.

> *"A substantial proportion of New Zealanders believe that they have the right to walk the bank of any river because of the 'Queen's Chain'. People are always somewhat surprised when Council staff explain that the public rights over riparian margins vary from place to place, ownership is sometimes complicated and that in many instances there is no right of public access at all."*

6.2 Abuse of access

According to both landholder and user submitters, it is a small percentage of the population that regularly abuses access rights, reducing recreational opportunities for genuine users. A small number of submitters, mainly landholders, say that there is significant abuse of access. Although many landholder submitters indicate that most recreationists cause few problems when accessing land, it may be easier to refuse access to all users than to risk misuse by a few.

Some user submitters feel that they may aid the landholder by observing any out-of-character behaviour and reporting it. A few user submitters add that more genuine users accessing a property will dissuade others from undertaking criminal action. One submitter notes that access to public resources cannot be prevented to control those who use land for non-legal purposes.

"The type of person who causes vandalism is not going to respect private property anyway, so trying to prevent access to the public will only have a limited benefit to the landholder […] preventing official public access will not stop vandalism – it will only stop responsible members of the public. Often crime is actually reduced by making an area more accessible. When there are responsible members of the public around, there's more chance that criminal activity will be noticed […] Farmers should also be careful about blaming urban visitors for vandalism, because much of the crime in rural areas is committed by the local people who know exactly when the farmer is away."

"This sector of the public [percentage that act irresponsibly and damage property] is, in our experience, the prime reason for controls on access to private land."

6.3 Unreasonable refusal of access

Many user submitters recognise that there can be genuine reasons for restricting access at certain times, but feel that access may be denied on unreasonable grounds. Some user submitters consider that reasons for preventing access, such as lambing, fire risk and commercial use are being used more frequently. A few submitters state that landholder liabilities, such as liability under the HSEA, are a large part of refusals for access.

"Countless acres of land have been commandeered by private owners in the name of grazing rights, which includes locking gates, fencing without gates and even blending of this public land into private lawns and gardens […] A common argument is that OSH will make property owners responsible for any accidents that may happen on their land, should the public venture."

A few submitters feel that Trespass Act and Conservation Act 1987 provisions are being used to unlawfully exclude the recreating public from land. Chapter 10.5 covers amendments to legislation in greater detail.

"[A]ll land owners (including farmers) have the right to deny access to any person for any reason or even for a non-reason. A growing problem is that some lessees of public lands are adopting the attitude that the land is theirs and are now calling it privately owned land."

6.4 Landholder concerns

A significant number of responses were received on this Chapter from landholder submitters. Most landholder submitters state that they generally allow access and enjoy interacting with the public, but are concerned that greater opportunity for access will result in greater risks and problems.

Some Maori submitters state that they have particular concerns relating to access for cultural reasons and that access hinders the economic and potential economic

opportunities of Maori landholders. Chapter 3 refers to arrangements on Maori land in greater detail.

> *"The majority of Maori land based businesses are in the small to medium category where any hindrance on economic opportunities will affect the viability, confidence and participation of Maori land based businesses in the commercial sector. This in turn can affect the economic sustainability and viability of Maori land."*

With owners or managers not necessarily resident on their land, it means that it is difficult for landholders to know whether any illegal activity is taking place on the land. In some cases, these landholders are unable to control the activity of members of the public on their property. This point is pertinent for Maori and Trusts, although it is noted that some Maori and Trusts do have the ability to control activity as they have appropriate mechanisms and policies in place.

Some landholder submitters perceive that the general public lacks connections with rural New Zealand. Individuals accessing land may not know how to behave around stock or when to avoid them. Some submitters feel that these factors will place the traditional the landholder-user goodwill relationship under pressure. Some submitters consider that this will not be helped by a small percentage of the population that abuses access rights.

> *"We have HUGE concerns about any change in laws for public access to private land […] We have invested heavily in building up our dream farm; returning a run down farm to productivity and bringing hundreds of thousands of dollars into the local community. Out farm is unprotected much of the time; our only protection being locked gates making the walk to the house too far for burglars to bother with to date. Our enterprise will be endangered in multiple ways if public access is legislated for private land."*

> *"It will lead to confrontations between land owners and the public regarding people accessing rivers close to landholders' dwellings and buildings, severely affecting their privacy and security. Even more so if access means day and night."*

Security and theft

Several submitters state that it is not uncommon to find cannabis growing on their property, which can occur more frequently on large properties with areas of bush or forest. Some of these submitters are concerned that they may be liable upon discovery of illegal substances on their property. As the risks increase, several submitters state that insurance costs are rising.

> *"Have found dope growing equipment and dope on my property."*

Submitters refer to several instances of stock and property theft as well as vandalism. Poachers have removed sheep and cattle on many properties. In some cases, livestock has been slaughtered or injured. A few submitters indicate that vegetation has been stripped or removed. Some submitters have had farm equipment stolen and are concerned that machinery and vehicles will become easier targets for vandals.

"We have never denied access to those people who have asked permission, but we have found a great increase in illegal activity...poaching and theft and the lighting of fires in our native bush by tourists ignorant of our New Zealand unwritten laws of the land."

Personal safety and privacy

Many landholder submitters are concerned about personal safety and privacy. Some landholder submitters emphasise that many rural properties are isolated and it can prove difficult for emergency services to reach farms quickly. Rural women and children are noted as being especially vulnerable. Some landholders may receive unknown individuals on their property at any time of the day of night, with a request for access. A few submitters note instances when they have been confronted by aggressive strangers demanding access. Some of these landholder submitters are concerned that any right of access close to houses and farm buildings could result in more encounters, therefore they may refuse permission for access in the future.

"Small block owners are often able to see their entire farm, and if public access was widened, the direct effects would be considerable loss of privacy (which is often the reason people move to rural areas in the first place); stock disturbance because paddocks are smaller and rotated more frequently; the strong possibility of increased interaction with or intimidation by strangers, which has security implications; and loss of feeling of control over land that is one's property."

Biosecurity

Many submitters consider that increased access across properties can compromise conservation values and facilitate the spread of disease and weeds. A few submitters are protective of the conservation values of their property or location, and state that access could harm, or destroy, the fragile natural environment. A few submitters note that biosecurity is a real concern if non-walking access is permitted, such as horse riding and 4WD use. During periods of drought, exhaust emissions from vehicles are a fire danger.

A few submitters are concerned that human faeces are being inadequately disposed of by some members of the public. Faeces that have been deposited on land can be consumed by animals or washed into water sources. Unvaccinated dogs may also cause a biosecurity threat, transferring disease to other animals.

"Fouling near waterways from unburied faecal waste".

Habitat/environmental degradation

Some submitters perceive that further access will increase the potential for environmental degradation as well as the threat to kai moana. Several submitters state that in some cases, members of the public have harvested or pillaged the resource. This occurrence is assisted by easy vehicular access and can often be undertaken by foreigners who are not aware of local customs.

"Occasionally people try to take their dogs with them and a few get upset when I point out to them that dogs are not allowed on the walkway and I request that

they return. People who do take dogs with them through cows and calves get very frightened by the cows protecting their calves. It has been made easier for people to try to get to and obtain shellfish etc. while not proven, limits and undersize shellfish have been exceeded and taken."

A few submitters note that there has been inappropriate behaviour around, and desecration of, culturally sensitive areas, generally due to ignorance. Several submitters therefore, keep the history and location of such sites confidential to reduce this problem. Any land that has public access, some Maori submitters state, should be access for recreational purposes only.

"Facilitating greater access for the public has particular consequences for tangata whenua. Open public access has resulted in the desecration of taonga and both identified and unidentified sites may be subject to damage. The Group must not support any initiative that may result in further public access to customary sites […] [object] to the release of information concerning customary sites. Access route information should be confidential to the landholder and those holding mana whenua."

Threat to conservation

Some submitters express concern regarding the implications of increased access on areas such as yellow-eyed penguin habitats. Some of these submitters state that they have been actively involved in the conservation of these penguins and other mammals, through activities such as trapping predators and restricting public access. In some cases there has been an increase in penguin chick survival rates, due, these submitters believe, to the measures taken. These submitters feel that strips of coastline that can be shown to be important for the conservation or protection of wildlife must be excluded from any concept of increased access.

"Then there is another reason we don't want every body wandering around. We have a small habitat of yellow eyed penguins living and breeding on our property plus several colonies of fur seals and sea lions which don't have a lot of people at present disturbing them […] By letting public access become unrestricted we are endangering these species".

"This [yellow-eyed penguin] species would be adversely affected, possibly decimated, following an unrestricted public access to the coast. This situation would become even more dire if restrictions on dogs are limited only to their potential impact on farm stock […] These penguins tend to frequent coastline that is easy for people to access by foot. Their viable terrestrial habitat varies from old growth forest (typically DOC estate) to farmland (typically private land). They are easily disturbed by the proximity of people and readily killed by dogs. They are present and vulnerable year-round. Bluntly, implement unrestricted coastal access and you can kiss goodbye to yellow-eyed penguins on the New Zealand mainland."

Fire risk

Many submitters indicate their concern that the landholder is liable for fire started on their property if the cause of the fire and person responsible for it are not identified.

Many of these submitters are unsure of their liability under the Forest and Rural Fires Act.

A few submitters feel that the instances of arson are increasing. Some submitters state that fires have been caused by cigarette or badly-lit camp fires and may be started during periods of extreme fire risk. These submitters would like the right to restrict access during this period as forestry companies do.

> *"[W]e were victims of a bush fire lit by tourists walking over our land without permission and in plain disregard for our signs. The fire destroyed several acres of native pohutukawa (over a hundred years old), native toi toi, flax, pampas and grazing […] Who is held accountable for this?"*

Health and safety liability

Most landholder submitters are uncertain of their current obligations under the HSEA. They consider that the responsibility of the landholder for the protection of the recreational user on their land is unfair and that such a liability should be reversed. Some user submitters believe that reversing HSEA liability onto the user may reduce pressures on landholders to refuse access.

A small number of submitters state that users can impact negatively on the health of farm workers and landholders, causing stress. This can arise through the pressure for access. The safety of those on the farm can be put at risk if users get into difficulties. A few landholders feel that hunters on their farm could pose a risk of inflicting an injury on someone else on the property.

> *"I have a moral and spiritual, plus a legal responsibility to protect our taonga from any invasive encroachment. The safety issues of both pedestrian and the farm environs is a legal obligation that we cannot compromise. The cost far outweighs the advantages for any change in policy."*

> *"The stress caused by the existence of undesirables on our land is incalculable. If the Government forces access on us it can take full responsibility for the damage to the lives of the innocent land occupiers and the land that forcing access will certainly cause not to mention the laws that it interferes with."*

Provision of facilities

Some landholders state that the provision of services associated with access, such as toilets, rubbish bins and running water can be costly. Many submitters state that litter or disposal of unwanted goods is a concern. Users may abuse or ignore existing toilet facilities and landholders are fearful that increased access may make the provision of facilities a full-time responsibility.

> *"Earlier submissions […] listed many reasons why it would be reasonable to impose conditions when providing access. One of these is the biosecurity risk […] Because of the size of many High Country properties they are more susceptible to many of the tribulations created by people seeking access as they are likely to spend a day or two longer on the property. This, we suggest, warrants special attention*

particularly in dealing with the disposal of human waste. One solution in this respect lies in the provision of adequate toilet facilities on access tracks before they are publicly identified and their regular servicing (by the appropriate authority not the adjacent titleholder."

Some landholders feel that maintenance of access should be the responsibility of central or local government. A few submitters suggest a "user-pays" system that would see users maintaining accessways themselves, including weed management. Several submitters state that they now require a small fee for the use of facilities.

"Some areas need to be left inaccessible to naturally preserve the life there […] Govt. needs to meet the cost for infrastructure that goes with this nation wide want e.g. toilets at beaches, roads that will stand up to the tourist numbers. On the Coromandel there is a huge cost at preparing the roads before and after summer. This cost falls onto the ratepayers."

Impact on forest/farming practices

Some submitters state that a farm is a workplace and a business and must, on occasion, be closed from access – and these submitters would like to be able to do so without explanation. Landholder submitters note that being available to permit access and advise of any risks or respond to queries can be time-consuming. It is considered that increased access may mean that facilitation will become a full-time occupation.

We purchased [a station] in 1998. That first summer was an absolute nightmare as far as demand for access was concerned. As new owners, it seemed that everyone was having a go. There were requests for far more than just access. As new arrivals, trying to put our best foot forward in a community, it was difficult to know what to do. However, it soon became apparent that open slather was not a viable option and that we had to set a policy in place that could be clearly articulated and fairly applied".

Some submitters note that their responsibility for users has grown as the public are often unacquainted with usual farm practices, are unaware of how to behave around stock and do not observe general codes of conduct. Some submitters add that people attempt to bring their dogs onto private land and are unconscious of their impact on livestock.

A few submitters consider that their land use, such as deer farming and forestry blocks, is incompatible with access. In addition, multiple ownership of some forestry makes it difficult to monitor access, especially when the land is managed by a third party.

"Unauthorised hunting of game and killing of stock, altercations with trespasser, stock disturbance (loss of lambs/calves), significant costs incurred e.g. fences cut, stock needed to be remustered and redrafted, stress, threats to ourselves and friends, theft of property, cutting down of fences and native bush, danger to our children (pig dogs, high powered rifles), abuse for refusing access, unauthorized camping and fires, additional cost to the farm as farm manager has to redraft stock, chase poachers etc."

7 Access To and Along Water Margins

Key points made in submissions

- The Queen's Chain is a powerful ideal and there is much public expectation surrounding the concept.

- Esplanade reserves, esplanade strips and ambulatory marginal strips are mechanisms suggested by submitters to ensure access to waterways and public land.

- Some submitters state that subdivision is an inadequate mechanism to provide for public access.

- Some submitters consider that local authorities are not translating access requirements under section 6(d) of the Resource Management Act 1991 into practice.

Background from the report

Having unrestricted access to and along water margins has long been an expectation of the public. Maori expectations for access are based on customary access and use of coastal resources, confirmed by the Treaty of Waitangi. For Europeans this expectation is founded on a legal history of reservations along water margins for public use.

Most people understand the Queen's Chain to be a 20 metre (or one chain, which was determined at the time of settlement to be the road width) strip along the edge of substantial rivers, lakes and the coastline, and owned by the Crown or a local authority. It is assumed that the public has a right of access along this strip. It is this notion of accessibility along the coast and waterways that New Zealand society has long held to be a sacrosanct right of the public.

The legal reality, however, is substantially different. At no stage has New Zealand law established that the public has full rights of access to, or use of, land alongside all rivers, lakes and the coastline. The practice throughout New Zealand from early colonial times was partial rather than complete reservations along water boundaries. This point is commonly misunderstood. *(Page 45)*

7.1 The ethos of the Queen's Chain

Many submitters refer to the tradition of the Queen's Chain and the expectation of the public that surrounds it. Many users are keen to ensure that the concept be retained and expanded where practicable. Both landholder and user submitters recommend that the Queen's Chain be clarified so that people understand their rights of access.

A few submitters state that the Queen's Chain is a myth that should not be promoted. A few submitters recommend renaming the Queen's Chain to place it in a New Zealand context, such as calling it an esplanade reserve or marginal strip. Most Maori state that they would only accept a Queen's Chain on their property following substantial consultation and negotiation. Chapter 10.3 refers to the Queen's Chain in greater detail.

> *"We support the embracing of the Queen's Chain ethos".*

> *"The Queen's Chain has been demonstrated to be an ideal, rather than a legal entity. It is probably better kept as an ideal because its symbolism is the source of its strength. No agency of central government or local government should be permitted to capture the ideal for other purposes."*

7.2 Mechanisms for providing access along water margins

Submitters make several suggestions relating to mechanisms for providing access along water margins, including the establishment of esplanade reserves, esplanade strips and ambulatory marginal strips.

> *"The present legislation is piecemeal and none of it directly addresses this issue. The use of it will not adequately deal with the issue. Separate legislation dealing with that point needs to be put forward for debate and addressed directly on the relevant point – and hopefully would be made law."*

Most submitters on this Chapter consider that access boundaries should move with every alteration to the bank of a river, margin of a lake or coastline. Many user submitters feel that there should be reasonable access to and use of moveable boundaries. One submitter considers that unformed roads along water margins could be replaced with ambulatory marginal strips.

More submitters support the provision of esplanade reserves rather than esplanade strips on subdivision. One submitter states that the current ability of local authorities to require esplanade reserves is sufficient. Another submitter notes that esplanade reserves (and marginal strips) have purposes apart from access, such as conservation, that should be taken into account. In instances where the balance between access and conservation has been struck, one submitter adds that it would be a waste of resources to force the landholder to go through the process again.

"I support the Review Group's suggestion that favour solutions that are not reliant on survey mechanisms but instead follow the principle of marginal strips. Marginal strips move with changes within the riparian environment (such as coastal erosion or riverbed changes), providing the flexibility needed."

"Local government councils need to ensure that esplanade reserves are taken in preference to esplanade strips on subdivisions of land or in accordance with the rules of the district plan OR that esplanade or access strips create by agreement with landholders (sections 235 and 237B Resource Management Act 1991) are clearly identified. The local government councils are also responsible for identifying unformed legal roads adjacent to the coast and waterways. It is our experience due to river and coastal changes these may no longer be in the appropriate place and may need to be designated 'moveable' as are esplanade and marginal strips."

7.3 Use of subdivision

Although subdivision is the main trigger for extending the Queen's Chain, some submitters state that it is an inadequate trigger to provide for public access. A few submitters consider that subdivision provides only patchy and ineffective access, often impaired by poor maintenance, due to the difficulties of managing water margins. Access occurs sporadically depending on an area to be subdivided rather than on recreational need. Several submitters recommend that access to waterways and public places be a requirement of subdivision.

"Unless we have plans how do the planners/designers know where to create access ways when subdivision is changing. Subdivision is usually on a piecemeal basis. Access opportunities have been lost or the best result not achieved because of nil plans."

"[Subdivision is a] potentially slow method of acquiring extra rights for the public. Some properties may not be subdivided in a hundred years."

"At present the only mechanism to extend the "Queen's Chain" is triggered by subdivision, and the effectiveness of this mechanisms is very much dependant on the enthusiasm and financial resources of the appropriate territorial authority. While considerable progress has been made in the larger urban areas, little or no extension of access has occurred in most rural districts."

A submitter states that the issue of public access on subdivision can be challenged by adjacent landholders at the time a territorial authority notifies an intention to form an accessway along the riparian margin. One submitter notes that the creation of some Maori reserves on partition of land do not necessarily safeguard access because they can be sold on. Outside the subdivision process, one submitter states that a council has limited powers to extend access areas.

A few submitters suggest that subdivision and negotiated easements/settlements remain the primary triggers for access to/along water margins. One submitter who

supports this statement considers that public access is increasing as subdivision of major landholdings proceeds.

> *"I understand that when a subdivision is made of small allotments an esplanade reserve is required to be gifted to the local body but if large allotments (rural) are made then the council has to acquire a reserve. It is not often that councils are prepared to pay for one. All subdivisions should be required to provide an esplanade reserve."*

> *"The use of the RMA to provide further esplanade reserves on subdivision does not work, as Maori land is not subject to this requirement, or has already been partitioned and developed to the extent that even if reserves could legally be taken, physically there is insufficient undeveloped land left adjacent to the water to provide for public access."*

7.4 Power and role of territorial authorities

Under section 6(d) of the RMA, territorial authorities are required to recognise and provide for the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers, yet some submitters consider that these authorities are finding it difficult to translate this requirement into practice. Most of these submitters believe that public access has a low priority for territorial authorities.

> *"Local government was seen by many at the meeting as being the logical authority however it is increasingly burdened by devolution of responsibilities and functions by central government. I fear that walking access would have a low priority in most councils."*

A submitter states that amendments to the RMA gave local authorities responsibility to require esplanade reserves and strips. This submitter considers that local authorities have often opted for strips rather than reserves and that smaller subdivisions can avoid esplanade requirements entirely.

> *"Some local authorities, such as Tasman District Council are reluctant to create esplanade strips, or similar, at times of subdivision – they prefer to take the money as reserve contributions. It would be wrong to rely on this mechanism to achieve public access".*

> *"Some modification was made to the legislation leading to the Resource Management Act that placed a responsibility on local authorities to require the provision for esplanade reserves and strips to be included in District Plans but many councils took the opportunity to be modest in their consideration of public access needs."*

It is noted that the RMA does not distinguish between obtaining esplanade reserves in urban areas as opposed to rural areas. Associated with this is the constant pressure in urban areas to reduce or waive esplanade reserves to maximise the development of sites. A few submitters suggest that there is a need to provide guidance to territorial

authorities for reserves to take precedence over the need for full development potential.

A few submitters suggest that the current situation whereby the provision of public access has been addressed by many agencies under different statues has meant that efforts to improve public access are at best ad hoc incremental efforts.

> *"To achieve a meaningful improvement in the state and quality of public access to the outdoors, the Council seeks the establishment of a national agency with a statutory mandate to promote public access to the outdoors. Without an obvious and interested leader the provision of public access will continue to be implemented in an ineffectual manner."*

> *"There is no consistent approach between territorial authorities (TA) regarding the need to ensure access to the coast when subdivision or development of coastal land is proposed and/or in securing esplanade reserves or strips."*

A few submitters feel that local authorities are performing adequately in relation to provision of public access.

> *"The […] Council disputes that it has not translated s6(d) of the Resource Management Act into planning practice. This section requires territorial authorities to provide for public access and specifically the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers".*

A few councils consider that they are adhering to the requirements of section 6(d) of the RMA. It is noted by a few of these councils that they have attempted to incorporate this section into their District Plans, although others acknowledge that their consideration of access-related issues may not be complete. Chapter 8 covers the role of local authorities in greater detail.

> *"Council takes its duty under [s]ection 6(d) of the Resource Management Act 1991 very seriously […] Developing the […] District Plan was a lengthy and quite costly process. It however resulted in quite a robust local consensus on whereabouts people need access and what the respective responsibilities of the public, landowners and Council should be toward providing and exercising the privilege of public access. No doubt other Councils are in the same position."*

> *"The Council has yet to develop a comprehensive District strategy for the acquisition of esplanade reserves and to increase the clarity and transparency of decision making in this regard."*

8 Access to Public Land

Key points made in submissions

- Many submitters consider that the amount of land in public ownership is extensive, but they feel that this resource is being under-utilised because there is no access to it.

- Many submitters express concern that there has been a perceived lack of support from local authorities in assisting the public to exercise their access rights.

- While the Department of Conservation has been given responsibilities for access, some submitters feel that its promotion of walkways and access to public land is poor.

- Some submitters assert that the enhancement and protection of public roads would result in improved access.

Background from the report

Public land encompasses over 30 percent of New Zealand's land area. A large proportion of it is available for walking access. Public land may be administered at a central government level (e.g., national parks, conservation parks, reserves and marginal strips) or at a local government level (e.g., regional parks, recreational reserves, esplanade reserves and roads). The Group also received comments that an important part of retaining and protecting the Queen's Chain is requiring access across private land to get to it. If access is not possible then the value of the Queen's Chain is diminished.

Legal and practical access to public land can vary significantly, and is affected by the following factors: the degree of formation of public roads (unformed roads that cross private land may be obstructed or not well defined); public land may be landlocked by private land and permission required from the adjacent landholder(s); or physical changes to rivers or the coastline means that legal access is now through a water body or across private land. *(Page 62)*

8.1 Publicly-owned land

Many submitters who consider that the amount of land in public ownership is extensive feel that this resource is not being taken advantage of as there is a lack of access to it. Most of these submitters state that where public land is available, reasonable access to it should be a basic requirement. Many submitters refer to the report, which notes that 30 percent of New Zealand's land area is in public ownership,

one of the highest percentages of public ownership in the world. There is, therefore, in the view of some submitters, considerable scope to further improve public walking access to the natural environment within these publicly-owned lands. These submitters feel that public reserves are not being managed correctly by local authorities and departments.

Some landholder submitters consider that options for enhancing recreational opportunities on public land be explored before access onto private property is reviewed.

> *"New Zealand has more public land per capita than anywhere else in the world, so there would not seem to be a need to increase the area available. I feel that much better use could be made of the existing resources".*

> *"There is presently 30 percent of land area in New Zealand that is publicly owned. Much of this land has considerable access restrictions. If there is a need for greater outdoor access this is where it should come from."*

The concern for some landholders adjoining public land is that access to public land for a specific activity could develop into a general right of access, not necessarily for any specific purpose. For private land there would need to be a strict emphasis that the right was for transit only and that right on that land differed from the area to which a user was going.

8.2 Role of local authorities

Many submitters believe that local authorities are an impediment to realising the potential of access. Some user submitters state that local authorities find it difficult to act for the public in the face of pressure from private interests. These submitters note that local authorities appear unwilling to resolve access issues, especially in regard to the use of unformed roads.

> *"I believe, with strong basis in direct experience, that local authorities could and should play a much more positive role in promoting and publicising access possibilities […] If the existence of legal roads were clearly known, and councils ensured that there were no obstructions to access across roads, this may relieve some of the current pressures on private landowners, as well as on people who seek access without knowing where they should and shouldn't go."*

> *"[A] lack of action by district councils to promote and enforce existing access rights".*

> *"The onus for defining and marking the exact location of [unformed or abandoned roads and riparian strips] should not lie with the user, but with either the local authority or government department in consultation with the adjacent landholder(s)."*

Submitters consider that local authorities must actively prevent the unlawful closure or blockage of these roads. A few submitters suggest that local authorities be made to comply with the current law regarding public roads, preventing their blockage by erecting fences or any other structure. A few submitters suggest that councils could assist landholders who provide access by contributing to fencing and planting costs and addressing health and safety risks.

> *"The Land Access Report notes a number of overlaps and functioning difficulties with existing access legislation that may effect Council's ability to adequately provide for future demands. The Council therefore considers that it is a matter of importance that these conflicts are resolved."*

One submitter states that clarification of the responsibilities of local authorities may involve costs to those authorities. Another submitter notes that local authorities have the right to close up or prohibit access, yet private landholders are expected not to.

One council considers that any activities of an access agency will raise public expectation and awareness of their rights to access unformed roads and marginal strips along waterways without giving adequate attention and resourcing to the issues or conflict that this may create.

> *"Council considers […] that the small amount of public good to be gained from promoting the location of [unformed roads and marginal strips along waterways] will be overshadowed by the problems of trespass, spooking of stock, problems with dogs, disruption to farming operations, crime (such as shooting, poisoning and theft of stock), safety issues and the inevitable backlash to come from rural landholders."*

A council considers that initiatives to promote further access to open spaces using unformed roads are fraught. This council notes that an issue of road stopping can be referred to the Environment Court.

> *"A negotiated solution […] where the paper road could be stopped in return for an alternative strip of land on the farm may be impractical given the development of the farm or its geography. In Council's experience this method may not be acceptable to the occasional users of the paper road, and the issue may end up referred to the Environment Court anyway. The issue becomes wider than simply one of negotiation between the landholder and Council. The risk of litigation from attempting to do something positive for all parties is high. Stopping roads is an increasingly public issue. Council is hesitant to unnecessarily expose itself to this conflict."*

8.3 Department of Conservation

While DOC has been given responsibilities for access, many submitters feel that its promotion of walkways is poor and that it hinders public access to public land. With limited funds and many conservation issues to deal with, some submitters consider that DOC does not accord walkways the attention that they deserve.

"We would like to bring to the committee's attention that tracks and routes are being lost (in the Conservation estate) due to mismanagement of funds by the Department of Conservation – this is badly affecting access to the backcountry. Simple backcountry tracks and facilities (ie. Huts) are being lost either [through] neglect (lack of maintenance) or inappropriate "upgrading" to an inappropriate standard (sometimes contravening DOC's own Track Service Standards".

"Even DOC appears to have forgotten, if not ignored their obligation to maintain and manage the recreational aspect of the land assigned to them to manage. Rather they have treated the estate as if they owned it and desire to exclude the true owners. From a recreation perspective it would be very hard to support DOC being in charge of access issues for New Zealand, as they have to date shown nothing but incompetence in this regard. If they were liable for damage [to] vehicles and personal injury I am sure with their current mentality they would excuse themselves liability by removing all vehicle access and possible even go as far as removing all tracks so the public being the true owners cannot enter."

One submitter states that walkways are falling into disuse due to a lack of advertising by DOC, which does not continue the practice of announcing the re-opening of walkways. Most of these submitters feel that DOC's responsibility for the New Zealand Walkways Act should be transferred to another department or organisation that can give it greater priority.

"The Department of Conservation is often reluctant to help meet the costs if it involves expenditure on land outside the conservation estate, ie the road leading to a DoC reserve."

"DOC [does] not maintain the […] walkway in our opinion to a reasonable standard, we pay for all tracking on the walkway each year. Everytime we ask for a financial contribution…they say 'we have no money' […] I am collecting incidents on DOC's arrogance and mis-management, over time I will have the walkway disbanded and manage it via a community trust. Beware of DOC they do not deliver on promises."

A few user submitters refer to the ability of DOC to require a concession for access to publicly administered lands. Some submitters do not consider that DOC should be able to charge the public to cross its conservation estate simply for fishing access (although DOC concessions do not exclude the public). Landholder submitters also question the right of DOC to charge a fee for access when this is not required for access onto private land.

"The charging for access and exclusivity of access is invidious and damaging to the cause of widespread public access. The Department of Conservation charges concessions for use of the public estate for commercial use, this gives incentive to them to allow concessions and sets a precedent. We believe strongly that DOC should not be allowed to charge concessions instead only allowing them if the commercial activity will not interfere with conservation and private users."

"The Reference Group acknowledges that the Department of Conservation has increasingly moved to cost recover some recreational use of public land. It would be illogical and hypocritical if Government were to regulate to prevent private landowners from doing the same thing."

A few submitters consider that DOC is performing well in relation to recreation.

"DOC has done a wonderful job of opening up the national parks."

"I think [that the DOC managed parks are wonderfully maintained in general and signage also is very good."

8.4 Public roads

Some submitters assert that public roads provide a valuable tool for extending public access to the countryside. Some submitters state that it should be a requirement of local authorities to affirm public rights along formed and unformed roads. Some submitters suggest that new accessways should be provided if existing roads to public lands are inadequate rather than relying on the goodwill of landholders to provide alternative access. Many submitters feel that the network of legal roads should be identified and publicised.

A few submitters consider that unformed roads allowing access across farms should be removed from maps. One submitter expresses concern that public expectation regarding access to unformed roads will be raised following the establishment of an access agency.

"Council is extremely concerned that the activities of the Access Agency will raise public expectation and awareness of their rights to access unformed paper roads and waterway marginal strips without giving adequate attention and resourcing to the issues or conflict this will inevitably create […] This should not be undertaken until the tools and policy development are in place to resolve the conflict between public expectation of access, and pre-existing private land management rights."

"[Public roads] are an ideal mechanism to ensure access and perhaps an extension of the current network should be considered as a means of solving the problem nationwide."

"Access could be enhanced by full utilising paper roads, public land etc."

Some councils state that decisions on access, in particular road closure, need to be taken strategically.

"Agree [that] the legal road situation is haphazard and could be rationalized with landowners in many cases. This could happen when landowners apply to have road[s] stopped or where Council has identified a benefit in creating esplanade

reserve[s] for public access and there is an opportunity to use unformed legal road[s] on the property as part of the negotiation process. However, we would also note that the current process of stopping legal road[s] carried out by local authorities often occurs without full consideration of the full spectrum of potential issues, including access, conservation, heritage issues etc. Again, this highlights the need for an "Access Strategy" to make sure decisions on road closure are taken strategically rather than on a case by case basis."

A few submitters add that there should not be any closure of unformed roads without due process.

"The Club is acutely nervous of the proposal that legal roads be considered as currency in trading to secure foot access. Through this process, legal entities that have value for all forms of recreation could potentially be exchanged to secure limited access for just one mode of access."

"I object very strongly to [the use of unformed legal roads as leverage for access, closing them in certain areas and in others re-forming them for walking or bike access only]. If this option is to be considered then it must not be done in isolation and there should be consideration given to the needs of responsible recreation four wheel drive users."

9 Access onto Private Land

Key points made in submissions

- Most landholder submitters are opposed to any changes to the present situation, which means retaining the right to say "no" to public requests for access onto private land.

- Landholders want the public to acknowledge that access is a privilege, not a right.

- A great many landholder submitters consider that public access onto private property would cause significant problems.

- Some landholder submitters are concerned that "as of right" access (the "right to roam") will be granted to the public (and do not always distinguish between the "right to roam" and other access issues, e.g. legal roads/public resources).

- Most user submitters do not consider that "as of right access" is necessary for their enjoyment of the natural environment.

- Some submitters feel that tensions will continue to exist as rights for the user are poorly defined and the demand to go onto land is not going to disappear.

Background from the report

The Group has interpreted "access onto private rural land to better facilitate public access to and enjoyment of New Zealand's natural environment" to mean that it has been asked to consider a range of options, from the status quo where the landholder allows access after permission has been sought to "as of right" access.

Views on this issue, unsurprisingly, raised some of the most varied opinions encountered by the Group. There appear to be two groupings – the majority for maintaining the status quo and the need to obtain permission for access – and a small number for developing a New Zealand form of "as of right" access to facilitate free and ready access to the countryside. *(Page 67)*

9.1 Right to refuse access

Most landholder submitters would like to retain the status quo, which means retaining the right to say "no" to public requests for access onto private land. Landholder submitters state that while in most cases access is granted, the farm is at heart a business and must, from time to time, be closed for farm management reasons. Most of those Maori who made submissions oppose the provision of public access on land

that disrupts or constrains activity, as the land is a wealth-generating asset through uses such as farming, forestry and rural tourism.

In addition, landholders consider that other factors, such as security, fire risk and health and safety liabilities, may result in permission being refused. Landholders would like to be able to control access for those and additional reasons covered in Chapter 6. Some submitters note that this right of refusal is important for the protection of some conservation areas and fragile natural habitats.

> *"Legislate away private property rights and protection is achieved for the irresponsible."*

> *"I feel very strongly that the government should not legislate away our right to decline access […] owning land comes with the legal right to benefit, restrict use, or change they way that the land is managed."*

Many user submitters give examples where they believe access is being refused without good reason or liabilities and other farm management responsibilities are being used as excuses to deny access. User concerns regarding ability to access land are covered in greater detail in Chapter 6.

9.2 "Access is a privilege, not a right"

Increased access onto private property is considered by many landholders to be a privilege, not a right and most of these landholders would like the public to acknowledge that access is a privilege. Landholder who accept that it is legally not a right to gain access onto private land do not want the "right to roam".

> *"Access to other peoples' property has always been and should always be a privilege not a right."*

Permission for access onto private land is a long-held tradition that most landholder submitters state that they uphold in the majority of cases. Submitters feel that retaining this tradition is important, not only for preserving property rights, but for continuing the goodwill relationship that exists between landholders and users. Some landholders are concerned that if access onto private land becomes a right, rather than a privilege, the attitude of farmers that currently grant access will be hardened.

> *"Our lifestyle block is as much a workplace as any farm. We have the added disadvantage that our driveway was once part of the access to conservation land. Because of this, people who have visited that land prior to our ownership of the property assume they still have the right to do as they please on our land."*

A few user submitters consider that quality access for recreational purposes is a right, and are concerned that landholders may limit access to land in some cases. Rather than seeking "permission" from the landholder, which infers the right of refusal to provide a right of way, one submitter would prefer "notification" of the landholder, indicating a courtesy of informing the landholder that the individual is exercising a right to

walking access. Another submitter notes that, ideally, there should be a balance between the rights of ownership and the rights of citizenship.

> *"[This balance would acknowledge the] property rights of the New Zealand landholder, but it would also recognise that the public have a moral right to walk in the countryside, an entitlement based not on the law but on deep and refined feelings of fairness and reasonableness."*

> *"Private ownership concerns can be addressed by getting the message to them along the lines, that while they control access on their own property, they will at some time in the future want to visit a river or beach and would be most unhappy if they couldn't."*

9.3 "As of right" access

Many landholder submitters are concerned that "as of right" access (the right to roam) will be granted to the public and consider that such a right could result in an foreseen number of people on private property. A few submitters are not convinced that the right to roam will be discarded as an option for access in New Zealand. Many submitters do not distinguish between the "right to roam" and other access issues, e.g. legal roads/public resources, considering that any additional access or strengthening of current access provisions will equate to access as of right. Several submitters see similarities between the property rights of rural and urban landholders and think that application of a right to roam in urban areas would be untenable.

> *"[I]t is apparent that, although you do not propose a 'right to roam', you are proposing a right of access to any and all waterways (undefined), including those that may only run on a part time or interim basis through the year […] You are in effect advocating a general right of access to large properties of private landholders and this in effect is a right to roam by stealth".*

Landholders associate the right to roam with a reduction in property rights and land values and are greatly concerned that it would lead to an increase in crime. Several submitters note that more genuine users in the outdoors mean more people able to observe and report the misconduct of irresponsible users. Some add that unlawful behaviour is likely to occur under any access system.

> *"The 'wander at will proposal has obvious drawbacks from social, political and security angles. The outdoor recreation public should respect private property and ask permission while landholders should respect the public character of outdoor recreation."*

> *"[T]ypes of bad behaviours and unlawful activities happen now under the present situation (and to nothing like the extent implied). Secondly, with the introduction of an offence provision based statutory code of conduct and more 'honest eyes' out there and with the strongest of incentives to act responsibly in order to make the improved access situation work, the far greater probability is that such bad*

behaviour and unlawful activity will actually decrease. The current restrictive situation greatly favours covert illicit activity."

9.4 Access to a location, not the right to roam

Support for the right to roam by users is small. A few submitters consider that the right to roam with guidelines may be appropriate - in areas where access to open space is limited, on high country estates, where land is unproductive or where rates have been waived. They suggest that the right to roam is an appropriate voluntary means of providing access. A submitter notes that the right to roam is already working well in several places in New Zealand that are privately owned.

"That wander at will is an appropriate voluntary means of providing public access in some parts of New Zealand and Government should include it in access planning."

"We support the formalising of a 'wander-at-will' agreement for areas of land where the landholders are happy for people to enter their land. This would clarify the rights and responsibilities of the parties concerned. We appreciate that a 'right-to-roam' policy is a controversial matter in respect to private landholders. However, we feel this policy could be considered and applied where the land involved is not productive, i.e. not farmed or used for any particular economic benefit to the owner/s, or where rates have been waived by the local authority because the land is considered of no economic benefit to the owner/s."

Most user submitters consider that there is little benefit in or need for the right to roam in New Zealand to benefit from recreating in the natural environment. These submitters state that they desire fair, unobtrusive and reasonable access to water margins and across private land to public land (to gain access to a particular location or point). For many anglers, the challenge of their activity may be gaining entry to a river at a restricted number of places then having the freedom to walk up the riverbed, rather than having access anywhere they desire.

Most submitters are prepared for access onto private rural land to remain by negotiation only. User submitters state that they are willing to accept a large curtilage access restriction, as may be included in a code of conduct. Submitters also recommend marked accessways located away from work areas and private dwellings.

"I read, by implication, that it is fair and reasonable for all New Zealanders to have reasonable and responsible access to the public estate for non-destructive recreation."

"We do not seek a 'right to roam' across farmland but a right to access to waterways and to walk up and down them for fishing and other recreational purposes."

"[A]ny roaming on private property is a matter of negotiation between the person or persons wishing to roam and the landholder or occupier on a private basis."

"Taranaki landholders present at the New Plymouth evening meeting seemed to have the impression that the Reference Group's proposals would force them to allow all and sundry through their front gates to get access to the river across their properties, in violation of their private property rights […] [T]his is not the case and this impression needs correcting. The way we see it working in Taranaki is that the angler gains access to the river channel either by a formed or unformed public road, or by obtaining permission from the farmer to cross private land in the same way that they do now […] What would be different, is that having gained access to the river channel, the angler would be able to fish on upstream secure in the knowledge that there is a 20m margin of land along the river on which they are entitled to walk."

9.5 Tensions regarding access will continue

Some submitters feel that tensions will continue to exist as rights for the user are poorly defined and the demand to go onto land is not going to disappear. Therefore, these submitters consider, it is important for walking access to be thoroughly addressed to provide for recreation in the future. Chapter 2 covers changing social conventions in greater detail.

"In light of the findings in the report, and the numerous comments made at the stakeholder and public meetings subsequently held throughout the country, the […] believes one point is very clear – the status quo is not an option."

10.1 Objective: To Strengthen Leadership

Key points made in submissions

- Submitters who support Objective 1 believe that a responsible and accountable access agency has the potential to contribute to the resolution of many of the problems and concerns surrounding walking access.

- Most submitters support the establishment of an adequately-funded and independent access agency or an Access Commissioner with a duty to regularly report to Parliament. Many recommendations were made regarding the functions of such an agency.

- Many submitters suggest that a contestable fund be established to create and manage accessways.

- Some submitters do not believe that an access agency is required.

- Of those submitters who do not believe that an access agency is necessary, some feel that leadership within the existing framework can be better strengthened by more consistent and active involvement by local authorities, who may already carry out some or all of the suggested functions, or by using existing user and landholder networks.

- Submitters who do not believe that an access agency is necessary often fear that an additional agency could be costly and/or captured by bureaucracy.

Background from the report

First and foremost, a strategic approach to providing for public access is needed. The gradual erosion of social conventions and changing economic and social environments have affected the way in which access occurs and the Group believe that this erosion will continue. As a nation we need to respond. This investigation shows that the ad hoc measures currently used to provide for access are not sufficient. Many agencies are involved and, at times, these agencies and the mechanisms they employ work against each other. The Group notes that the RMA provides a mandate for access to water margins, but questions whether this is sufficiently robust. Few district councils take a co-ordinated or strategic approach to developing or managing access. There is wide variability in the degree of emphasis placed on access by local government.

Few initiatives have been undertaken to foster and promote public access nationally and in a strategic manner […] The Group considers that a New Zealand access strategy needs to be developed, to give a framework for leadership, co-ordination and coherence to the various approaches, programmes and initiatives for improving public access. *(Pages 73-74)*

10.1.1 Potential to resolve problems relating to walking access

Considerable comment was received regarding the need for greater leadership on issues relating to access. Most user submitters support the establishment of an access agency. These submitters consider that unique recreation opportunities are available for New Zealanders because of the outdoors environment, but express concern that access has not been addressed in a co-ordinated manner that ensures that these opportunities continue to exist. These submitters, therefore, advocate an access agency as a promoter and overseer of access requirements.

> *"The [Association] believes that an access agency is urgently required. The agency must be representative of all stakeholders with a valid interest of access to conservation land."*

> *"The Board supports the proposed creation of an independent office to guide this issue forward to improve public access, something similar to the Parliamentary Commissioner for the Environment. This new agency should be allocated considerable resources, to enable it to carry out the huge and complex responsibilities with which it would be charged."*

> *"I agree with the public consultation paper that a co-ordinating access agency should be formed to identify and protect public areas".*

> *"I believe that the formation of a government-funded access agency is vital, and that it needs to have statutory powers to enforce public access on the rare occasions where landholders break the rules. In order to be fair, perhaps the agency should also have powers to take action against members of the public who do the same. The formation of an independent agency would also take the heat out of relations between resource management agencies (including Fish & Game) and landholders."*

Most submitters who support Objective 1 believe that a responsible and accountable access agency has the potential to resolve many of the problems and concerns surrounding walking access. Many submitters have a vision for what access means to them and how it relates to the tradition of outdoor recreation in New Zealand. These submitters consider that there needs to be a co-ordinated approach to access to clarify the situation for all interested parties. Any approach to future access needs to have a solid framework to be enduring as well as flexible with the changing requirements of society.

> **"***The stakes are very high and I, like most New Zealanders, want to see future generations having the right of access to quality outdoor recreational opportunities."*

> *"Free access to all rivers and lakes that may contain trout provided at regular intervals at define points that are clearly marked and sign-posted."*

> *"The Government must move very quickly to ensure that we can enjoy these recreational areas as we always have and not lose the ability to walk or travel to*

the waterways […] of our choice. These resources can no more be owned than the wind or the sun's light on our faces."

10.1.2 Suggestions for type of access agency

Most submitters who indicate their support for an access agency promote:

An adequately-funded and independent access agency or an Access Commissioner, created as an Officer of Parliament:

- with formal responsibility for the creation and implementation of an access strategy;
- parliamentary delegated authority to review and require other statutory bodies with specific responsibilities relating to the protection, notification, provision and enhancement of public access to do their job; and
- to report annually to parliament through a designated Minister of the Crown who did not hold potentially conflicting portfolio responsibilities.

> *"[Support] [t]he proposal by the Acland Group for an independent 'Access Commission' (and Commissioner) which would be better equipped with information to make knowledgeable proposals".*

> *"An Access Agency or Commissioner accountable to Parliament and working under parliamentary guidelines with regular reporting (to Parliament/Minister) would be essential to the matter being resolved fairly and timely. Funding (at adequate levels to ensure that the project can be completed in a reasonable timeframe) would need to come from central government on what is a matter of national concern and interest."*

> *"[Support] [t]he report proposal for an independent Access Commission and Commissioner to improve access e.g. with greater information, landholder negotiations, codes of practice, seeking to remove and reduce friction between recreational users and landholders."*

Walkways Commission

A good number of submitters consider that the former Walkways Commission is a good model on which to base a new access agency. Some of these submitters state that the Commission negotiated many walkways, a lot of which crossed private land. Some submitters state that many farmers supported the walkways scheme, although, one submitter notes, district walkway committees themselves served with a variety of eagerness and commitment. A few submitters are concerned that the disestablishment of the Commission has meant a loss in knowledge, skills and enthusiasm relating to walking access.

> *"The former Walkways Commission with its associated local District Committees is a suitable model for a new Access Commission. DOC took over responsibility for walkways but have been very passive. We feel frustrated over the lack of any*

progress in improving the range of public walking access opportunities outside of the DOC estate, since 1987."

"We consider that the former Walkways Commission might well serve as a model on which to base an access agency and we consider it essential that this agency be totally independent of the Department of Conservation (too many conflicts of interest otherwise."

National Trust

Some submitters state that a Trust formed as a structure similar to the Queen Elizabeth II National Trust could be established. This could be responsible for supporting individual communities to fund the costs of negotiating and maintaining access. If needed, one submitter notes, a Trust could pick up the New Zealand walkways concept.

"We see this organisation as being independent of both DOC and MAF and suggest that it be setup as a trust similar to the QEII Trust with trustees from the various interested parties. By having an independent Trust to implement your objectives it would have a clear focus for action and if the trustees were carefully chosen then it would make rapid progress than if it was part of DOC or MAF."

"Establishment of a trust similar to the Queen Elizabeth II National Trust, to establish and maintain access routes across private land. This could be open to individuals and enable NGOs to contribute."

Crown Agency

A few submitters suggest that a Crown agency should take responsibility for access but with local representation.

"[I]t should be the responsibility of a Crown identity to ensure suitable and safe accessways are provided for user groups."

"It also follows that to makes [extension of public access] happen someone or some crown agency has to be made responsible – and accountable."

A submitter suggests that, if leadership of walking access is incorporated within another agency, Sport and Recreation New Zealand is the most appropriate agency, with responsibility for national leadership in recreation and promoting physically active lifestyles with walking as a fundamental activity.

Ombudsman

A few submitters state that an Access Ombudsman would be an appropriate body.

"An Ombudsman be established to deal with disputes."

10.1.3 Possible roles for an access agency

Many submitters are in agreement on the possible roles and functions of an agency.

Some (not an exclusive list as many interesting ideas were offered) of the recommended functions are:

1. *To provide for and support the dissemination of information on access to the public.*

   To provide a standardised national code for information regarding access including nationally standardised notices, signs, and markers that are required to be used for walking access right of way purposes by landholders, user groups, local authorities and central government.

   To operate a website that enables individual citizens to access information on local walking access rights of way including mapping.

2. *To negotiate for the provision of access across private land.*

   To have responsibility for the negotiation for access across private land.

   That there should be some mechanism, such as a Tribunal of senior Commissioners, to deal with appeals of referral from local Commissioners. This Tribunal would be able to refer issues to the Courts for clarification.

3. *To provide a mediation service when problems associated with access arise.*

   That there should be provision for third party mediation to resolve conflict. This could be through a user and landholder organisation.

4. *To develop and enforce a code of conduct with landholders, users and tangata whenua.*

   There is a need for a regulatory code of conduct of acceptable behaviour of landholders and of individuals and user groups while exercising walking access rights of way, to be administered by an agency or Commissioner.

   That this code of conduct be linked to an education programme on rural social conventions co-ordinated by an access agency.

5. *To develop a national plan for access with emphasis on regional/local components and local solutions for access problems.*

   A lot of submitters feel that there is a need for strong local solutions. It is important to retain existing local user and landholder networks so that regional concerns are more likely to be addressed and resolved. One submitter agrees that solutions should be developed on a local level, but other issues can only be dealt with on a central level.

An independent network of local Commissioners or committees could be necessary if access has a low priority in local government.

6. *To set national standards for existing organisations and territorial authorities to adhere to.*

   Dealing with access issues demands links with other government departments, especially with LINZ. Some submitters recommend that an agency have the high-level support necessary to liaise and manage local authorities and to have influence over government departments such as LINZ, the New Zealand Conservation Authority, DOC and MAF. There must be national consistency.

   An overseer agency could police the provision of access to discipline any agency not fulfilling its obligations.

   A few submitters consider that it is important for an agency to avoid capture by unnecessary bureaucracy or to avoid being subsumed by different priorities.

7. *To assist local authorities with their access responsibilities.*

   Develop regional plans for walking access including the mapping of rights of way. These would be statutory plans as part of walking access legislation.

   It is a role of central government to ensure that legislation is permissive and encouraging of local council initiatives.

8. *To administer any access legislation.*

   This is a central part of an agency's role.

   A few submitters suggest that a Commissioner have the power to decline/approve subdivision on the basis of whether there is sufficient access and, along with the Overseas Investment Commission (OIC), the power to decline overseas purchases of land.

   Responsibilities under the New Zealand Walkways Act could be shifted to an access agency, so that they could become a priority.

9. *To provide for or ensure the maintenance of accessways and additional facilities.*

   An agency's management role should ensure the maintenance of accessways and additional facilities to provide support for landholders who have provided access.

10. *To build a relationship with tangata whenua.*

    Many Maori submitters state that any future access arrangements must be by negotiation with Maori and involve Maori in their development. Chapter 3 covers access arrangements on Maori land in greater detail.

10.1.4 Contestable Fund

Some submitters consider that a contestable fund could be managed and administered by an agency for the provision of access. Some submitters who do not necessarily support the creation of an access agency feel that a contestable fund could be an alternative for encouraging the provision of walkways. Local communities could draw from this contestable pool to develop and maintain access where necessary. A few submitters suggest that this fund be administered along similar mechanisms to the Nature Heritage Fund.

> *"That a contestable fund be available annually to the Access Commission to address access issues including land purchase."*

> *"The government must also establish a contestable fund under the control of an independent body to address access issues including land purchase where necessary to provide access to waterways."*

> *"The Public Resources Access Fund is a contestable Ministerial fund established to help achieve the objectives of the Public Resources Access Policy […] The Public Resources Access Fund helps meet the cost of enhancing walking access by providing contestable finance for projects that enhance access."*

10.1.5 No need for an access agency

Some submitters do not believe that an access agency is required and consider that the status quo works adequately. A few submitters note that most access issues are local and that a small national agency could not deal with a multitude of access issues. A national plan for access would not provide a "best fit" solution because of the variations between districts, regions, farming systems.

> *"Access arrangements should be found locally and negotiated on need. There are already community, farming and recreational groups that undertake leadership roles now with respect to negotiating access – these groups should be encouraged."*

One submitter is concerned that an access agency may raise public awareness and expectations, without giving adequate resourcing to issues and resolving the conflict created.

> *"[S]ees no need for an additional agency to be created – there is already a proliferation of central and local government bodies with a mandate to address access issues."*

> *"Another woolly term [leadership] that infects and infests this 'debate'. What is proposed is yet another quango when no such body is needed. When-oh when-will the view from Wellington change […] to the more sensible notion that local problems are best resolved with local solutions."*

10.1.6 Use of existing leadership

Some submitters who do not support the creation of an access agency feel that leadership within the existing framework can be better strengthened by more consistent and active involvement by local authorities, who may already carry out some or all of the suggested functions.

> *"There are already agencies responsible for all publicly owned land including DoC, LINZ, and district and regional councils. Many of these agencies already fulfill an advocacy role for access to and across private land."*

> *"If the bar needs to be risen in terms of Council practice, there are ways of achieving that without resorting to establishing a new arm of government."*

A few submitters note that there are already procedures through the RMA and council plans to address access issues where necessary.

> *"In our opinion there is no need to establish another quango to promote access nationwide. There are already procedures via RMA and council plans to address access issues where necessary. We believe this process is working well and if fair to all with the people affected addressing the matter where and when required in each district."*

> *"The only role for central government is to ensure that legislation is permissive and encouraging of local council initiatives, with some stock when local councils are failing to meet local needs."*

10.1.7 Performance of existing agencies

Many submitters state that there should be ministerial action to improve performance across lands, conservation and local government portfolios. Access responsibilities should become the mainstream functions of these organisations. An access agency could oversee these functions, provide cadastral information, signage and an access website.

> *"There is Ministerial action to improve agency performance across Lands, Conservation and Local Government portfolios. Extra resources are given to LINZ, DoC, and local authorities to enable them to carry out tasks re access properly."*

> *"The need is for improved performance by existing agencies, brought about by leadership at Ministerial level across Lands, Conservation and Local Government portfolios, leading to amendments in law, review of some performance areas (e.g. esplanade reserves under RMA), possibly national policy statements, and direction and additional resources to agencies if necessary for information provision etc."*

Some submitters consider that DOC should only be involved in the administration of access if it can focus on recreation, as well as conservation, and give walkways a higher

priority. One submitter states that an organisation could be set up under an umbrella of DOC or a regional council, with safety plans and guidelines.

> *"[T]he NZ walkways concept, which has languished since its administration was handed to DoC."*

> *"In our case DOC has all the information and have signs setting out rules but DOC employees giving out contradictory information. Educate DOC employees."*

Some submitters suggest that extra resources be given to LINZ, DOC and local authorities if necessary to enable them to do their job properly. One submitter suggests that a lead access body be LINZ as it has a good record with land management, a rapport with both parties, access to mapping and surveys and a good knowledge of high country tenure issues.

> *"The present system of DOC and local authorities is not working well. DOC is not doing well because it is not being funded to do this and has not been instructed that this job is to be a priority for them."*

> *"The existing agencies i.e. LINZ, DoC and local authorities should be given extra resources and direction to vigorously pursue the enhancement of the Queen's Chain and access through freeholded land to retired high country."*

10.1.8 Cost and management of an access agency

A few submitters are concerned that an additional agency could be costly and ineffective. These submitters consider that an agency could be captured by bureaucracy for purposes not related to the provision of access. A few submitters express concern that if an agency is established within another organisation or department, the budget could be used for purposes other than access.

> *"A new Access Agency could easily be captured by vested interests with non-access agendas. A new Access Agency could be use as a delaying action for the implement[ation of] change. Both the established agencies and a new Access Agency have the potential for progress or failure."*

10.2 Objective: To Provide Certainty

Key points made in submissions

- The majority of submitters make it clear that the provision of information on the location and type of access is important for the removal of uncertainty regarding the availability of access and the rights of landholders and users.

- Most submitters state that there should be better and simplified information systems on access, such as the drawing together of land titles and landholder contact information.

- Most submitters advocate that access information be provided at minimal/no cost.

- Most submitters consider that accurate, regularly updated access information should be marked on maps or be in a readily available document.

- Of those submitters who believe that better information systems are required, several refer to the co-ordination of such systems by Land Information New Zealand.

- Some submitters state that nationally-identifiable signage is an important tool to indicate available accessways where necessary.

- A large number of submitters feel that there should be an enforceable code of conduct, including an education programme on rural land and expected social conventions.

Background from the report

It is clear from submissions that access arrangements must provide surety of access outcomes for all parties. Surety means legal and practical access. The amount of time and resources (especially public) that will be invested in the process need to result in long-term access arrangements.

Landholders will want an outcome that is supported by appropriate behaviour. A code of conduct […] could improve access arrangements by establishing the expectations for appropriate behaviour. If landholder expectations about conduct are not achieved, less secure forms of access arrangements could decline over time, due to landholder dissatisfaction and reluctance to allow access. *(Pages 76-77)*

10.2.1 Provision of accurate information on location and type of access

The majority of submitters make it clear that it is essential that land information be drawn together as the provision of information on the location and type of access is

important for the removal of uncertainty regarding the availability of access and the rights of landholders and users. Most of these submitters feel that it is a public good requirement that access information be free and easily accessible. Some of these submitters note that commercial and professional users benefit from this information rather than the recreating public.

> *"We strongly endorse the view that the public should have ready access to land information either in electronic or paper form at minimal cost. Information on land tenure has been targeted at commercial users in recent years and the general public have found it increasingly difficult to access land information for public access purposes."*

> *"Accurate and clear public access be provided. [Information on] [p]ublic land [should] be available at minimal or no cost."*

Many submitters refer to the changed role of LINZ and are concerned that it no longer ensures that cadastral information is readily available in both electronic and paper form. Submitters are particularly keen to be able to hold the information in their hand when they are outdoors. These submitters note that LINZ is now a retainer of information only and does not publish maps, rather it makes the information available to third parties who may publish it if they identify a market.

> *"[I]nformation relating to land titles and access options should be accurate and readily available. It also believes that the Government and Land Information New Zealand (LINZ) should address deficiencies in the current system as a matter of priority."*

> *"LINZ should graphically record the existence of marginal strips on all relevant survey plans and Landonline spatial view."*

> *"I agree with the Public Access New Zealand view that a lack of publicly available authoritative information on the location and status of land and access has created a barrier to greater participation in outdoor activities."*

Most of these submitters acknowledge the importance of a central repository of information on land titles, regularly updated to changes in land ownership and, for topography, of changes in land composition. Some submitters consider that it is still appropriate for LINZ to distribute this information. Some submitters recommend that an access agency be responsible for the maintenance and dissemination of land information.

> *"A national database that can be accessed by the public that gives accurate information such as that contained in spatial/cadastral maps. Access to the database could be via Internet free of charge."*

> *"We feel that many cases of conflict occur simply because of the difficulty of gaining information on boundaries, land owners etc and believe much of this could be solved with a national database accessed via the internet. This could be updated at local level […] through a central co-ordinator."*

A few participants add that this information should be made available in all regions, either through local councils, through LINZ and DOC and at information centres. A few submitters note that this is important to make available to foreigners and tourists the details on the location and type of access. This is necessary also, some user submitters state, to indicate the availability of walkways in a region and outside and for people to check whether and where there are unformed road on rural land.

> *"Have copies available at all information centres, local councils, landowners' place of business and home. This will be useful as it will stipulate what is appropriate behaviour for visitors. Have national symbols available for all access routes with code of conduct available in easily accessible places."*

Landholder contact information

Many submitters consider that there is a lack of information about whom to ask in order to obtain access to a property. This can dissuade people from attempting to access land or it can result in conflict if a user moves from one property to another without knowing how to best request permission from an adjacent landholder.

> *"Where permission is needed to access recreation land (either as the only access or an access way likely to be used by the public), the contact details of those owners/managers/lessees who are able to give permission."*

> *"One of the biggest problems encountered, has been the difficulty in establishing property owners or occupiers, to obtain permission to cross these properties to access fishing waters […] In the past, Wrightsons Stock and Station agents, published calendars showing property boundaries and contact phone numbers and who to contact, this has gone due to the privacy act".*

Many users indicate that they would like easier access to information about who owns the land, as well as the ability to contact landholders. If a user is able to obtain the information before he or she obtains contact details and permission, it fosters goodwill as landholders perceive that some attempt has been made to follow social conventions. A few users note that they do not have phone contact with them when in the outdoors.

A few user submitters indicate that there can be difficulty in the case of absentee landholders or multiple landholders, especially on Maori land and it also may not be known whether people who give/deny access are authorised to do so.

> *"The tramping club I belong to goes through a proper process when planning a coastal or cross country tramping trip. Landholders are (with difficulty) located and sent a request for access and provided with a stamped self addressed envelope. This usually works well but not concerning Maori land as inevitably no answer is received. The elder concerned eventually agrees, readily, but when on the property we have been chased off by others. Multiple ownership is a great problem."*

A few submitters state that user or landholder organisations could hold the relevant contact details and make them available upon request. There is some uncertainty

about how this point can be resolved due to current health and safety and privacy requirements. Many submitters consider that it would be the responsibility of an access agency to fulfil information requirements.

> *"We suggest that a register be kept locally i.e. County Councils, and available to genuine inquirers would be preferable, and that updated maps are critical."*

> *"Provide more information to recreationists such as phone numbers of landholders."*

Mapping

Most submitters consider that it is essential that maps containing access information are readily available, accurate, regularly updated and free. There is concern expressed that maps are difficult to locate and those that do exist are out of date. In addition, the information on cadastral maps is indicative only.

> *"There must be easy public access to cadastral maps and related information."*

> *"Take over the printing and publishing of cadastral maps and make them available at reasonable cost."*

> *"[T]hat access rights such as surveyed and paper roads are being lost through inaction and loss of information that use to be available on cadastral maps."*

Submitters state that they would ideally require cadastral information to be overlaid on topographic maps, or at least ensure that the maps are the same size for comparison. Most submitters want points of access and unformed roads to be clearly identifiable. These submitters would like maps to be legally definitive so that they can be used to help resolve access disputes. Some submitters add that a national map series would bring some cohesion to mapping and could be produced according to the popularity of certain regions. A few submitters consider that basic rules of conduct could be included on a map.

> *"We would ask that [cadastral] information be restored onto topographical maps that are commonly used."*

> *"Many areas have public access rights or rights of way shown on cadastral maps and previously referred to as a 'paper road' or a 'surveyed road'. These roads were never formed. The problem is that the cadastral maps recording these rights of way are no longer readily available to the general public and can only be sourced with some difficulty. We believe that there is an urgent need for this information to be made readily available to all interested parties including the landholders. Many hunters today posses GPS navigation aid that are extremely accurate and would stop or reduce the chance of trespass onto the privately owned land. Individuals would need to know the exact position of any access clearly marked on a map."*

Some submitters state that accessways should be recorded on land titles. One submitter notes that current maps have private tracks and huts marked on them so

that the public can assume that they are freely accessible. This should be rectified and the next generation of maps should have these incorrect features removed.

> *"The Council consider that information to land titles and access options should be accurate and readily available."*

> *"The identifying of […] access ways and the provision of styles and/or stock proof gates along such access ways. Such access ways, easements, unformed roads, marginal strips to be recorded on the land titles."*

It is thought by a few submitters that LINZ should re-assume its former role of providing hard-copy mapping as it is the repository of land information. Some submitters note that this could be transferred to an access agency who would work in co-operation with LINZ or that LINZ could assume responsibility for the provision of access.

> *"[LINZ] have a good rapport in development of land management strategies. The have a good rapport with landholders and recreational users alike (unlike the Department of Conservation). They have access to mapping, surveying, and independent project management skills necessary to undertake this task. They have a very good knowledge of high country issues."*

Signage

Some submitters state that providing better and more useful signage would benefit both landholders and users. Nationally-identifiable signage is an important tool to indicate available accessways for recreationists not used to being in the outdoors or who are accessing a different region. Many submitters consider that genuine users are likely to adhere to a well-marked accessway, reducing the potential for conflict.

> *"We agree […] that greater use of signposting needs to be undertaken where access is available. Clear identification of the places where the public can access privately and publicly owned land is a matter of urgency and should be the first priority of the proposed access agency."*

> *"Our Association strongly supports the clarification of existing access situations. We believe that signage and detailed maps would be of significant value."*

Some landholders feel that it should be the responsibility of local authorities or an access agency to provide signage and/or maintain the signage. A few user submitters state that poled routes or coloured waymarks would be adequate and costs minimal. These submitters prefer a more unmarked natural environment to enhance their outdoor experience. Some submitters add that signage should be kept to a minimum to avoid "visual pollution".

> "*[An Agency] could be responsible for seeing that landholders do not have to bear the costs of such things as stiles and signage whether paid for by the agency itself or some other […]".*

"Coloured access waymarks, signage or code labels that indicate, on a graded scale, the type of access".

Some submitters comment that existing Fish and Game signage and angler access signs are useful and set a precedent for the marking of access in the future. A few submitters feel that fenced access can enable a clear division between public and private land. Any access through private land, submitters state, should involve minimal disturbance of the farm business.

"We would not like to see the proliferation of signage at every access point, as signs would be both obtrusive and expensive. Signage definitely is required however where legal access is not obvious, or for code of conduct and guidance purposes, where access is negotiated across private land."

One submitter suggests the creation of a graded scale system of signage to indicate what type of access is available in different areas, which assists the user in identifying where access is/not possible and allows for flexibility for landholders providing access.

"My suggestion would be to have something like a gazetted 10 grade scale which was applicable across the whole country for all situations […] There may be a general requirement that such Access Code labels are present at 'every point of reasonable entry' e.g. building or site entrance, domain or farm gate, post [or] fence near river mouth, etc. There would be a corresponding general edict that if a label is not seen then it has to be assumed to be 'Access 1,2, or 3' (no unauthorised entry and [T]respass [A]ct applies".

Many of the submitters on this point recognise that signage can be tailored to suit local and regional needs but consider that it should remain identifiable as official access. Some submitters feel that these local solutions are essential to ensure that access is enduring and supported by all parties concerned.

"All signage on public access walking places should display signs in both official languages, Maori and English, and be approved by the local hapu and/or iwi prior to installation."

10.2.2 Code of Conduct

A large number of submitters consider that an enforceable code of conduct should be a cornerstone of an access strategy. Many submitters state that to gain support for the initiative, the code should be devised in consultation with user groups and landholder organisations. One submitter considers that, to reflect both the interests of landholders and users, an "access code", listing the most basic facts of considerate and acceptable conduct, would be appropriate.

"Anglers will accept a legally enforceable 'code of behaviour' that imposes a duty to act responsibly and respects farmers' agribusiness operations and privacy."

"A legally enforceable 'code of behaviour' that imposes a duty to act responsibly and to respect landowners' business operations and privacy needs to be developed."

"An access plan that envisages much negotiation could not sensibly go ahead without a code of access. But this code could struggle to gain widespread acceptance if it were part of an access plan that had no teeth."

There are many recommendations and comments made on the content of a code of conduct, which relate to:

- identifying the rights and obligations expected of all parties;
- need to request landholder permission before access onto private land and notify landholder of intentions for accessing land (including duration of stay);
- need to request permission for non-walking access (includes horses, guns, dogs, camping, 4WD use) onto private land;
- conventions for acceptable behaviour on property and at a place of business;
- ensuring minimal impact, i.e. leave no evidence of individual passage behind (no litter, close gates);
- the right to close land for a certain period, for reasonable and understood reasons such as farm management, conservation purposes, fire risk as well as the number of people on land at a particular time;
- no smoking or lighting fires on property;
- confining access to appropriate, defined routes (unless other arrangements are made);
- that users assume liability for presence on a landholder's property (includes liabilities under the HSEA, Forest and Rural Fires Act, Crimes Act and Occupiers' Liability Act);
- no enforcement of the Trespass Act for non-commercial recreation on land if misconduct cannot be proven; and
- methods of enforcement, which includes penalties for landholders who willfully obstruct access (many submissions query how a code of conduct would be enforced).

A submitter refers to the Scottish Outdoor Access Code, consisting of a substantial set of principles, detailing rights and responsibilities. This submitter notes that in Scotland users enjoy both linear and area access to private uncultivated land and suggests that it is a possible model for New Zealand.

"That [Scottish] version is based on a balance of rights and responsibilities, a balance now laid down by statute. Hillwalkers on the large private estates in the

Highlands do not have to decipher an access code that waffles on about social conventions and asking for permission. The Scottish code does not talk about privileges; it talks about rights."

Many submitters state that a code should be heavily advertised, included in newspapers and produced as part of an authoritative book on access. Some submitters feel that a code should be supplied to user and landholder organisations for distribution. A few submitters feel that it is important that a code be carried with users when recreating.

"Pamphlet placed at point of entry".

"There is a definite need for publicising what is acceptable behaviour on private land".

Many submitters consider that a key factor in ensuring the success of a code is a programme of education. Education could cover the history and composition of the Queen's Chain, an explanation of access areas and education on the responsibilities of both landholders and users. Some submitters feel that education on a code and social conventions should be part of school curriculums. Many submitters emphasise the importance of making this information available to tourists and new immigrants.

"By public education through the media, schools and tourist centres."

"An education programme should be undertaken – clearly advising the public: where they may go i.e. defined areas […] acceptable behaviour and responsibilities […] access is for walkers".

A few submitters consider that an outdoor access licence could be worthwhile, i.e. a compulsory access "pass" when requesting permission. A few submitters suggest that members of the public sign an agreement before access is given, stating that they accept responsibility if anything goes wrong when they are recreating. One submitter feels that a "code of behaviour" sticker could be affixed to car windscreens, providing a means for the landholder to identify visitors and make enquiries through an access agency. Another submitter adds that information and training needs on access could be like a driving test.

"[…] Landholders need to be able to identify anglers on their property, be this by the angler being able to contact the land owner or a simple identification strip with the trout fishing licence number and the name of the licence holder displayed within view in the car".

A few submitters are concerned that a code of conduct may be used to compel landholders and operators to provide access. One user submitter considers that the code should not become a means of enforcing exclusivity. A few landholder submitters are not convinced that a code of conduct could make any difference to the access situation.

10.3 Objective: To Embrace the Ethos of the Queen's Chain

Key points made in submissions

- Most submitters consider that the public should have legally certain and practical access to New Zealand's waterways, lakes and coastlines. These submitters state that access to the Queen's Chain should not be further eroded.

- Many submitters state that they would like clarification about legislation composing the Queen's Chain.

- Some submitters note that access should be moveable (where practicable) as the riverbed/coastline shifts.

- Some submitters consider that the Queen's Chain should not be expanded, as there is enough public land or that the Queen's Chain is a myth that the public should not continue to promote.

- Most landholder submitters do not support the "imposing" of statutory trusts, believing that this has negative implications for private property rights.

- Many user submitters support the investigation of the deeming of access for the benefit of the public but suggest that it not be used as a replacement for the Queen's Chain. Most landholder submitters do not think that deeming is a reasonable expectation.

- A few submitters state that existing access provisions are adequate and that priorities should be established regarding access versus land use.

Background from the report

The Land Act 1892 was the first effective legislative endorsement of the concept generally known as the Queen's Chain. This concept has heavily influenced the now commonly held view that access should be available to and along waterways, and to public resources including publicly held land, the coast, water, wildlife and fisheries.

The Group received a very clear direction that the public should have legally certain and practical access to New Zealand's waterways, lakes and coastlines, as held in the commonly accepted view of the Queen's Chain. The bottom line is that public access along the Queen's Chain should not be further eroded. Many submitters argued for the Queen's Chain to be extended and completed to include all beaches, waterways of public interest and all rivers and streams of a specified size. *(Page 81)*

10.3.1 The ethos of the Queen's Chain

Most submitters consider that the public should have legally certain and practical access to New Zealand's waterways, lakes and coastlines. Submitters state that the Queen's Chain could be enhanced by reaffirming the principles behind it, by recognising it as part of New Zealand's cultural heritage, mapping its present extent, preventing any degradation of it, and by planning to fill its gaps. Most submitters who support the extension of the Queen's Chain want it to be given binding legal status.

> *"Having lived in the UK for several years, I have always felt somewhat envious of the British, whose continuing and considerable access to the countryside seems to be guaranteed thanks to their vast network of traditional footpaths and bridleways. But at the same time I have been able to reassure myself with the thought of our nearest equivalent, the 'Queen's Chain'".*

> *"We need improved river and lake access – creation and expansion of the Queens chain concept – with a binding legal status […] We need secure access to our countryside assured for ever!"*

> *"[T]he Queen's Chain at least should be enshrined in law to keep the unique situation in New Zealand of access to the waterways and outdoors by all the people and not just the privileged few, as was the intention of Queen Victoria when the people of last century wanted to move away from that abhorrent situation which exists in Britain and other countries."*

> *"The strategy needs to recognise the 'Queen's Chain' as a rightful expectation, not adequately honoured by past governments or Maori interests, but something needing to be (eventually) legally and properly established. If NZ had a Constitution this would be an important fundamental and irrevocable component and expectation for all New Zealanders."*

Many submitters feel that the Queen's Chain should be extended in a steady approach to all rivers and streams over 3 metres wide, and all lakes. Many of these submitters feel that the Queen's Chain should extend to Maori land also, although they may retain exclusive foreshore food/fishing rights. Where access is presently the Queen's Chain, this should be deemed "public access". Some submitters note that while universal public access along the coastline may be achievable and desirable, the same cannot be said of many inland waterways.

> *"The minimum water width to be so 'deemed' would need to be quite small as some of the best small fishing streams are narrow. Three metres would be a useful figure."*

> *"I would like to see the 'Queen's Chain' extended to cover (apart from exemptions) as much as possible of all water margins not at present included. I feel strongly that this is part of my heritage as a New Zealander in which I have firmly believed all my life and that its validity should be solidly affirmed. I believe that when property is sold, as well as when subdivision occurs, provision for the extension of*

the 'Queen's Chain' should be part of the transaction. I understand that about 70% coverage now exists and believe that consistent application of existing mechanisms will in time extend coverage nearer to 100%. The time it takes is of little importance so long as existing processes move the extension forward."

10.3.2 Clarification about the Queen's Chain

Many submitters state that they would like clarification about legislation composing the Queen's Chain. A few submitters consider that what constitutes a "waterway" needs to be defined before making moveable reserves. Landholder submitters are interested in this point as they do not want public access to any waterway regardless of its size. Kayakers and anglers state that the Queen's Chain must not exclude rivers of value. One submitter suggests that placing waterways in the same class as roads, with rights of navigation, may be an option. Another submitter recommends that the Queen's Chain be measured from high tide mark to the water's edge to provide certainty and to allow for natural change.

"Continue the progressive extension of public reservations: along the shores of all sea coasts and tidal estuaries; along the banks of rivers and streams at least 3 metres average bed with; along the shores of lakes 2ha or greater in area".

"The Queen's Chain should be measured from the continuing high tide mark or water's edge."

10.3.3 Moveable Queen's Chain

Some submitters note that access should be moveable where practicable as the riverbed/coastline shifts. This access should also flexible where obstacles exist. Some of these submitters observe that moveable access may avoid conflict in some cases as there is always certainty of access. A few submitters observe that the movement of a waterway may result in access imposing on the curtilage of a building. These submitters feel that moveable access requires further investigation.

"[E]mbrace the intent of the Queen's Chain i.e. access along a waterway regardless of where that waterway moves to".

"That walking access be a useable corridor, which is elastic to any changes in a riverbed."

10.3.4 Maintenance

Some submitters do not know who would have responsibility for the maintenance of some Queen's Chain accessways. Some submitters consider that councils should be required to pay for fencing, stiles and signage of these accessways to an agreed standard. A few landholder submitters state that a "user pays" system would ensure

public payment for access. A few submitters feel that maintenance should be the responsibility of the adjoining landholder.

> *"[I]f an ambulatory marginal strip was established, those benefiting from it should pay for it – not rural ratepayers though, through the local district council. That is just getting land owners to pay and is not acceptable."*

> *"We believe that until the following is resolved that we are unable to support access to public areas through private farmland […] resolving which public authority takes responsibility for maintaining public access. Maintenance includes weed control, fencing of access ways, health and safety responsibility and making the access way only accessible to walkers not trail bike riders etc and is actively policed."*

> *"Owners of adjoining land should be charged with keeping the [20 metre] strips free of noxious weeds such as gorse, broom, lupins, Russell lupins, pampas grass, thyme, briar, blackberry and wilding trees; as are owners of land adjoining roads, required to keep road verges cleared."*

10.3.5 Opposition to the extension of the Queen's Chain

Some submitters consider that the Queen's Chain should not be expanded and that the general public should be made aware that it is largely mythical. Some submitters consider that the Queen's Chain is only a mechanism for creating disputes and that it can, in some cases, be quoted erroneously by those wishing to have access up waterways.

> *"Make it clear to the public that the QC is largely mythical. There should be no extension or expansion of the QC."*

> *"The Queen's Chain, supposedly the trigger for this debate and report, is a myth that some groups still use to promote their own private interests. In reality, private titles are legal, whether rural or urban and the same rules must apply to both."*

A few submitters are opposed to extending the Queen's Chain to allow the public to walk on 20 metres of land, a considerable proportion of the average urban waterfront property. A few submitters are concerned that the report does not make it clear that improved access to waterways should exclude urban areas.

One submitter recommends that strips of coastline important for conservation should be omitted from the concept of greater access. Another submitter adds that while legislation may provide for access along some foreshore and waterways, much legislation overrides that principle, particularly where such access is not compatible with the surrounding land use, e.g. defence, farming, industry and quarrying.

> *"The imposition of a Queen's Chain 20 metre margin would have unacceptable implications for our property. This would allow the public to legally walk upon,*

and occupy twenty metres of our property, a considerable proportion of the average urban waterfront property."

Some landholder submitters state that where the Queen's Chain does not exist, negotiation and compensation of the individual farmer is needed. Many landholder submitters consider that if access is required, it should be purchased for the public by the Government.

"Where there is evidence of inadequate public access to public resources such as remote and desirable trout fishing spots or remote parts of the Department of Conservation estate it is up to the government to purchase adequate access."

"If there are any public areas that are not accessible the government should negotiate a public right of way with the land owner concerned who should be compensated accordingly."

A few submitters state that current access is adequate and that provisions in the RMA can be utilised. A few submitters note that recreation should not override conservation values. A few landholder submitters consider that extension of the Queen's Chain should not be raised until sufficient necessity for it is demonstrated.

"Until land in public ownership is fully utilised there is no need to acquire more in the form of esplanade strips, or access strips taken on private land by district councils or others with no compensation given and no responsibility and/or care taken by authorities or users for any of the associated problems to the landholder that may arise."

"It considers that existing mechanisms for securing public access, particularly the RMA, are adequate for securing public access. Instead of considering additional compulsory mechanism for securing access […] primary emphasis should be placed by the Government on supporting the development of voluntary access arrangements."

Some submitters state that they oppose access across Maori land (including an extension of the Queen's Chain to the coastline and waterways) without negotiation and agreement from the landholders concerned.

"The Federation asserts that embracing the Queen's Chain ethos […] should not be to the detriment of property rights or the customary rights of Maori. As stated above any extension of the Queen's Chain to the coastline and waterways on Maori land should be negotiated and agreed upon by the landholders concerned."

10.3.6 Statutory Trust

Most user submitters do not support "imposing" a statutory trust, believing that this has "unacceptable" implications for riparian owners' exclusive use and enjoyment of their property. A few landholder submitters fear that the imposition of a statutory trust

will also distort property prices. These landholders consider that it is not fair that they would have to look after an asset that they no longer exclusively own.

> *We oppose introduction of legislation that would change private property rights by way of deeming or creating statutory Trust, as this is a 'taking' of private property rights."*

> *While there is no difficulty about the public generally walking along beach areas, to suggest that the public should have a legal right to walk over and across private property above the beach, is a huge further strip. That effectively takes over a strip of land for public use and removes the landholder's rights of ownership and control."*

A few user submitters support the creation of a statutory trust. A few submitters state that a statutory trust is a favourable option for central government in order to avoid paying compensation to landholders. One submitter notes that this is a laudable ideal, although it may not be looked favourably upon by landholders. Some submitters state that they would like secure and increased access to the Queen's Chain but do not specify the type of access required.

> *"The option of creating a statutory trust is favoured over ownership transfer to the Crown and the associated difficulties of compensation."*

> *"As to embracing the ethos of the Queen's Chain, the Report's proposals in this regard involving […] statutory trusts, although commendable, seem likely to excite intense opposition by landholders. That opposition would be exacerbated – and the desired certainty of the proposal negated – if Maori land were to be exempt from these proposals, which would be seen by some, rightly or wrongly, as a racist confiscation of general land only. The Report's proposals have, however, been the subject of a certain amount of misinformation, and it is by no means certain that the proposals in their present form would be unacceptable to most landholders. We continue to support the proposals."*

10.3.7 Deeming

Many user submitters support the investigation of the deeming of access for the benefit of the public but some suggest that it be used as an interim measure to fill in gaps in the Queen's Chain, not as a substitute for a network of riparian reserves in public ownership. A few submitters recommend that water margins more than 3 metres should be deemed where the Queen's Chain does not currently exist. A few submitters recommend that deeming apply to Maori and non-Maori land.

> *"Of the suggested ways that deeming could be applied in relation to the Queen's Chain […], we favour the application of the second option listed, namely that legal public access be deemed on strips alongside all waterways of a certain size, and along lake and coastal margins. As the report states, this would achieve the original intention of the Queen's Chain, would formalise what many people believe to be true about the Queen's Chain anyway, and would put an end to*

ambiguities and inconsistencies that have arisen in relation to access along waterways and margins. It would also implicitly allow the continuation of legal access where a waterway changes course or where a coastline changes."

"There is a need for clarification [of legal access along rivers], which the concept of 'deeming' would seem to fit well. I doubt that this would cause much strife down here as there is a general acceptance of the concept of the 'Queen's Chain', even where there is no formal reservation. The minimum water width to be 'deemed' would need to be quite small as some of the best small fishing streams are narrow. Three metres would be a useful figure, with the possible constraint of a marker such as a bridge upstream of which deeming does not apply."

"I support […] that public access to the actual margins of waterbodies, including the coastline, be created by a simple deeming provision in law to fill the gaps where public rights of access do not exist. I would not support such a mechanism replacing the Queen's Chain, but instead being used to fill the gaps."

"[Deeming] should not be seen as an alternative to a network of riparian reserves in public ownership."

Some user submitters state that they favour deeming provisions as part of negotiated solutions, not as a means of imposing access. Access could be differentiated into categories for "activity" and for "passage only" in order to clarify the situation for landholders. Alternative arrangements will be needed where dwellings are built close to waterways.

It is suggested that deeming should only apply when a particular landholder is on the land and must be renegotiated if land ownership changes.

"If a farming business agree to a deemed right of way, it should only apply to that land while that particular farming business is still in operation, it must be renegotiated when and if the business changes ownership structure. The farming business should always have the right to cancel the right of way".

Most landholder submitters indicate that they perceive that deeming would not only restrict property rights, but that it would also remove crucial management control. Deeming may not be flexible enough to deal with seasonal farming conditions. One submitter is concerned that deeming access will lead to environmental damage and that it does not take rugged natural features such as cliffs into account. One submitter notes that deeming will create different rules for rural and urban landholders.

"[…] [O]pposed to any proposal to move fixed marginal strips onto coastal properties and to 'deem' public access where this is not currently available. This would be an appropriation of the fundamental rights of property owners to use and control access to their properties, advanced by the Group in the absence, it would appear, of any economic or environmental analysis."

"It is therefore extremely cheeky of the paper to suggest that the Crown has any right through some kind of historic usage to deem that the public can have access

within '20m of water that is greater than 3m in width'. This would be an appalling invasion of property ownership rights."

A few submitters state that existing access provisions are adequate and that priorities should be established regarding access versus land use. One submitter considers that accelerated coverage can be achieved by more consistent application of existing mechanisms.

"The group appears to ignore the wide range of existing legal access mechanisms with no suggestion for their improvement."

"It considers that existing mechanisms for securing public access, particularly the RMA, are adequate for securing public access."

10.4 Objective: To Encourage Negotiated Solutions

Key points made in submissions

- Many submitters consider that negotiated solutions are essential to continue the tradition of goodwill as well as providing fair and reasonable access. These submitters think that the best solutions would be those that are negotiated (across private land to public land).

- Several suggestions are made by submitters in relation to negotiation. Some consider that mediation with a suitable third party, such as an appropriate authority, on a case-by-case basis would solve many problems.

- Most landholder participants state that there should be compensation where access is required or if land is taken for access purposes.

- Some user submitters do not feel that compensation is appropriate but consider that there is potential in using unformed roads as a tool in securing or negotiating practical access.

- A few user submitters are uncomfortable with roads being traded off for access and instead favour solutions that secure long-term access.

Background from the report

Access arrangements need to be practical, legally certain and in the right place. Sound processes for determining local access needs and the mechanisms best suited to meeting those needs are crucial for the improvement of access. Any processes for determining local access needs will require the involvement of tangata whenua, landholders, users, a proposed access agency and local government.

The process for improving access must address tangata whenua and landholder concerns in order to achieve favourable outcomes. Minimising inconvenience and the responsibilities of landholders, not increasing their responsibilities or causing problems with stock and property, are legitimate concerns. The sustainability of any result depends heavily on processes that engender mutual respect between all parties in terms of their rights and responsibilities for the land they are crossing. This respect is required both during negotiation and afterwards. *(Pages 83-84)*

10.4.1 Importance of negotiated solutions for securing access

Most landholder submitters consider that negotiated solutions, in particular regarding access onto private land, are crucial to continuing the goodwill relationship between landholders and users, as well as to provide fair and reasonable access. They state that any mechanism for addressing access must include the concerns of landholders, land

users and tangata whenua. They believe that negotiated solutions are important, as each farm has its own topography and layout to be considered.

A few submitters state that negotiated access will take a long time to achieve, and that large numbers of negotiations can be complicated and need the strength and dedication of all parties concerned.

> *"[N]egotiated access is likely to taken an awful long time given the degree of intransigence (and sometimes just plain eccentricity) exhibited by some landholders or their agents."*

> *"We support the principle of negotiated solutions where possible, although we note that large numbers of negotiations can be complicated, and also that negotiation is only possible where the Crown and public interest, as well as the landholders, have some strengths or interests which they can use in negotiations."*

A few submitters consider that negotiated solutions are an essential part of traditional partnerships created between the Crown and Maori and this partnership should be carried to any public access.

> *"Negotiated outcomes would primarily occur only where access was required to cross private land to get to public/deemed public land, or where the provision of vehicle access was a reasonable solution to the provision of otherwise distant pedestrian access because of distance to the desired location."*

> *"Negotiation allows for locally based solutions, gives a chance of dialogue and will provide a clearer solution for all parties and less scope for misunderstanding. People who have contacted landholders for permission are more likely to respect property."*

> *"[One iwi] has a strong and positive relationship with the Crown expressed in various agreements. Mostly we see these arrangements as being the nature of partnership agreements that have been achieved as a result of negotiation and agreement and never compulsion. It is most important that this principle be carried over in relation to any public access to our waterways. Any legislative access without our consent would cause massive damage to our relationship and we cannot imagine that the Crown would contemplate such a course."*

A few submitters feel that negotiated solutions could not enhance access. Several submitters feel that negotiation is important but that there could be a means of enforced acquisition or legislation when negotiation does not result in an access agreement.

> *"Negotiation with farmers is not an option as such agreements have failed in the past, the only option is full public ownership with very few exceptions."*

10.4.2 Methods of negotiation

Submitters make several suggestions in relation to negotiation:

- many submitters recommend mediation with a suitable third party, such as an appropriate authority, the Crown, or existing recreational/landholder organisation on a case-by-case basis;

- a few submitters suggest that a non-profit trust organisation could negotiate access, similar to the Queen Elizabeth II National Trust whereby landholders can covenant right of way access in perpetuity;

- groups requesting access should have legal status for entering negotiations, or a statutory district access committee could assume the responsibility;

- formally negotiate and establish access for major access needs, but leave it to individuals to negotiate their own access requirements out of that framework;

- negotiation must be voluntary and arrangements could be supported through assistance and incentives; and

- negotiation could cover practical and safe locations, seasonal restrictions, compensation, landholder liability, signage, maintenance of accessway and a code of conduct.

> *"User/interest groups can play an important part in negotiating local agreements within their community. Most of those pressing for greater access are already part of a national body or club, which can negotiate access on behalf of its members […] Negotiation at the local level can allow for different solutions appropriate to the particular situation and reflecting local priorities."*

> *"Local councils in conjunction with Federated Farmers and land owners, may be able to reach a negotiated solution in areas of substantial proven interest in making additional access available."*

10.4.3 Compensation

Most landholder submitters recommend that compensation be a consideration where access is required, or if land is taken for access purposes. Landholder submitters place emphasis on the importance of property rights and state that removal of them requires equal gain in another area, i.e. compensation. Several submitters consider that compensation be at fair market rates. A few submitters suggest that no automatic right of renewal should exist for negotiated settlements, whereas some landholder submitters feel that any agreement should be in perpetuity.

> *"The public […] should be kept to a set pathway. This will also considerably devalue our land. Will we be compensated?"*

"A new Access Commission should be prepared to pay annual compensation in return for an access agreement. Also the local territorial authority should offer an appropriate rate rebate to the landholder."

10.4.4 Role of roads in negotiations

Some user submitters do not feel that compensation for the creation of a right of way is appropriate, especially when a landholder may use an accessway such as an unformed legal road on their property for grazing or other farming purposes. Some submitters suggest alternatives to compensation, such as the exchange of unformed roads for more appropriate accessways. Several submitters suggest that all unformed roads be assessed to ascertain if they will be required for future use, then signage and weed control could be put into place. Where no future use can be found, this land should be disposed of to adjacent landholders and more permanent legal access found. One submitter suggests that regional plans be used to target key access points.

"I believe there are some circumstances where compensation is warranted but not in every case, and it need not be monetary. For example if an esplanade reserve continues to be grazed by the farmer then why should compensation be paid."

"Past generations had the foresight to create these legal roads and while they do not all offer practical foot access many do so. Where they are not suitably located and could be a hindrance to the landholders' operations they could be exchanged for a more practical route."

A few submitters suggest that funding be provided to fence off unformed roads, thus providing more certainty for both landholders and users, who expect to be able to use this access.

"Council believes that funding should also be made available to local authorities and landholders to fence off paper roads to mitigate the problems associated with providing public access to what is essentially an area of land managed as a single farming unit. Such a fund would provide a positive incentive to landholders to address this conflict and in so doing provide more certainty to the public regarding the route of the accessway."

10.4.5 Alternative means for securing access

Solutions that secure long-term access other than the trade-off of roads are preferred by a few submitters. Several submitters feel that unformed roads should only be stopped as a last resort, and only if there are better, legally permanent alternatives. Several submitters seek to ensure that a new road is not of lesser status than the one it replaces.

A few submitters are concerned that allowing the closure of unformed roads in return for public access may be exploited by councils and landholders. Chapter 8 refers to public roads in greater detail.

"Please do not sell or give [unformed roads] away! Also, I think you probably do not mean 'closed' as a road closure is legally only a short term thing, like for repairs or a car rally etc. I suspect your report means 'road stoppage' i.e. permanently redesignated for private ownership. Once roads are stopped, this will be almost impossible to reverse. Who knows what the future will be and possibly these paper or unformed roads will enhance and facilitate future access in many ways. Stoppage should only be considered if better and legally permanent alternatives, with the same access rights as roads, are created in return. And then only in the last resort!"

"[W]e would have concerns if any body such as an access agency had power to trade/negotiate away some rights in return for others e.g. any loss of unformed public road access rights."

10.5 Objective: To Improve Current Legislation

Key points made in submissions

- There is widespread agreement that there be changes to landholder liabilities under the Health and Safety in Employment Act 1992 and clarification for landholders of their responsibilities following amendments to the Act.

- Most landholder submitters feel that they should not be responsible for fires lit by other people, either legally or illegally on their property under the Forest and Rural Fires Act 1977.

- Many user submitters state that the Conservation Act 1987 requires amendment to prevent the exclusive capture of public resources (to close the "access loophole").

- Several submitters consider that the Trespass Act 1980 be amended; landholder submitters indicate that they would like the Act to be redefined to include more severe penalties; user submitters feel that the severity of the Act should be reduced.

- Some submitters state that the provisions for esplanade reserves be strengthened as part of a review of access provisions under the Resource Management Act 1991.

- Quite a few submitters consider that responsibility for the New Zealand Walkways Act 1990 be transferred from the Department of Conservation to another department/agency.

- A few submitters suggest that the Public Works Act 1981 be amended to provide for acquisition of land with compensation.

- Some submitters refer to amendments to the Local Government Act 2002 and the Wild Animal Control Act 1977.

Background from the report

The purpose of this objective is to encourage change to existing legislation and rules that hinder public access. In some cases the legislative restrictions are very generic and do not allow for exceptions for foot based access where risks are low. This objective can be pursued in conjunction with or separately from other objectives. Work on implementing this objective could begin immediately. *(Page 86)*

10.5.1 Health and Safety in Employment Act 1992

A large number of submitters feel that there is a need for clarification for landholders of their responsibilities under the HSEA.[2] Some submitters request further information about the "grey areas" of this legislation that have yet to be explained, as there is an amendment to the HSEA that exempts use of land for non-commercial recreational purposes.

A programme of public awareness about HSEA provisions is important as there is widespread agreement among both landholder and user submitters about the HSEA.

Some users have found that landholders use their HSEA obligations as a reason to restrict access. These submitters are prepared to assume liability for their own conduct, if that will guarantee access for members of the public walking across or carrying out recreational pursuits on private land.

> *"Another serious impediment to obtaining access is the OSH related liability. Landholders must be legally exempt from liability for all members of the public walking across or recreating on their land. […] Station closed their private road because of this unclear legislation."*

> *"Fish and Game believe land occupiers should be totally exempt from any OSH related liability for members of the public walking across or recreating on their land."*

10.5.2 Forest and Rural Fires Act 1977

Most landholder submitters feel that the Forest and Rural Fires Act should be amended to exempt landholder liability for fires caused by non-commercial recreation. Landholders consider that they should not be held responsible for fires when they are unaware that the person is on their land. It can be difficult to determine who is at fault, especially if the person who started the fire leaves the property. Landholders also desire assurance of cost recovery for property damage.

> *"I would hope that the Government recognizes the urgent need for review and demonstrated good faith early on by […] absolving land occupiers from any liability for rural fires cause by persons using their land for recreation."*

> *"Maybe all outdoors people need cover for fire as is available through organisations like Deerstalkers".*

[2] The Group received a letter of clarification from the Occupational Safety and Health Service of the Department of Labour regarding an amendment made in 1998 to subsection 16(4) of the HSEA, exempting the use of land for non-commercial recreation purposes. The Group was not aware of this amendment when it produced the report. However, there is still a high level of uncertainty and misinformation about landholders' obligations under this Act.

10.5.3 Conservation Act 1987

Many user submitters feel that the Conservation Act and the Wildlife Act 1953 should be amended relating to the sale of fishing and hunting rights to close the "access loophole" that permits the sale of those rights.

> *"Amend the relevant section of the Conservation Act and the Wildlife Act to close the loophole in the law that allows the sale of access rights to circumvent the existing prohibition on the sale of fishing and hunting rights."*

> *"The government strengthen the Conservation […] Act banning the sale of fishing and shooting rights to make it plain that charging for access be outlawed. (Some exploiters argue they are charging for access not the fishing). So the law needs an addition that fishing and shooting rights sales are prohibited 'or access thereto'"*

10.5.4 Trespass Act 1980

Several submitters consider that some landholders are using the Trespass Act to effectively "capture" for private and/or commercial use, fisheries, wildlife and natural waters. These submitters consider this to be a misuse of the Act as it was not intended to empower landholders to acquire de facto ownership of these public resources. Submitters consider that this matter needs further investigation. Many of these submitters note that addressing "exclusive capture" is a pledge in New Zealand Labour Party's outdoor recreation policy.

Submitters recommend that the Trespass Act be amended to include penalties for non-compliance with the code of conduct and to prevent unreasonable denial of responsible recreational use. A few user submitters suggest that the Trespass Act be repealed, considering it to be too severe. A few submitters desire penalties in the Act on carrying firearms to be addressed.

> *"We strongly agree that the Trespass Act needs to be changed to de-criminalise recreational access, and make it instead a misdemeanor, along with the defence of undertaking reasonable recreational activity."*

> *"[T]hat the Trespass Act 1968 and 1980 amendments are urgently addressed regarding the severe penalties on carrying firearms across private land for the legitimate purpose of hunting on adjoining conservation land."*

> *"The Trespass Act should be amended by the Government so that trespass is no longer a criminal offence."*

Some landholder submitters feel that the Trespass Act should be strengthened to enable them to have greater powers to enforce trespass.

> *"Unless the Trespass Act is amended to give the owner greater powers to enforce trespass then I totally oppose liberalisation of access law."*

"The sanctions available to [l]andowners under the Trespass Act are inadequate and should be strengthened even if [l]andowners retain their present right to exclude disruptive individuals."

10.5.5 Resource Management Act 1991

Some submitters state that access provisions under the RMA should be reviewed, including strengthening the provisions for esplanade reserves. Submitters recommend that local authorities implement the requirement of esplanade reserves or strips when any subdivision occurs. One submitter notes that the use of the RMA to provide further esplanade reserves on subdivision does not work, as Maori land is not subject to this requirement.

"Review exempted provisions in the Resource Management and Conservation Act to ensure greater provision of esplanade reserves and marginal strips."

A few submitters consider that access strategies should be made a requirement of District Plans under the RMA. Access could also be included in state of the environment reports. Voluntary and tailored access arrangements as part of RMA consents are the way forward, according to a submitter.

Another submitter notes that the RMA is a deterrent to allowing access, as it gives "any person" the right to accuse a landholder of contravening the Act.

"Local authorities need to improve their implementation of the RMA."

"Improvement in the implementation of the Resource Management Act is needed by local authorities."

The many views provided on the RMA support the proposal that this legislation be reviewed to promote opportunities for walking access.

"[N]eed to improve implementation of the RMA. It requires the enhancement of public access to and along the coast, lakes and rivers as a matter of national importance but local authorities often waive or reduce the requirements when subdivision occurs."

"I am very familiar with the problems present legislation presents to those trying to facilitate access to public resources. In particular the mechanisms for establishing Esplanade Reserves or Strips and the discretions available to territorial authorities to not consider their establishment on subdivisions over 4 ha. Most subdivisions of this size are rural in nature and therefore the access issues are very important in relation to waterways or to public land. Solution – alter the RMA to require territorial authorities to set aside Esplanade Reserves or Strips on every subdivision."

A few submitters suggest that the overlap between mechanisms in the Conservation Act, the Resource Management Act and the Reserves Act 1977 be eliminated, in particular the interface of marginal strip provisions in the Conservation Act with those in the RMA.

10.5.6 New Zealand Walkways Act 1990

Quite a few submitters are concerned that the New Zealand Walkways Act is being neglected by DOC and feel that it would be better managed by another government department able to promote its recreational value. Chapter 10.1 refers to the Walkways Commission in greater detail.

> *"Conservation Boards are responsible for promoting the establishment of new walkways, and to this end, the comments made by the reference group regarding the lack of progress in walkway creation are taken as valid criticism. With limited funds and many conservation issues to deal with, walkways cannot receive the attention they deserve from the regional Boards or DOC. It would be wise to shift the responsibility for implementation of the Walkways Act to an independent access agency so that it may become a priority again."*

10.5.7 Public Works Act 1981

A few submitters propose that, at a minimum, if a landholder is deprived of the right to control access to and/or use of his or her property, possibly by acquisition, full and fair market-based compensation should be paid under the Public Works Act (PWA). Landholder submitters consider that this is a just requirement as acquisition undermines and erodes property rights.

> *"Modification of the Public Works Act to provide for acquisition of a public interest in private property with full compensation payable may provide some means of redress in situations where a significant public interest exists."*

A few user submitters feel that the PWA should be strengthened to protect the public interest in gaining access to land.

> *"Both the RMA and PWA need to be strengthened to prevent private advantage having predominance over greater public good."*

10.5.8 Other Acts

Amendments to the Local Government Act and the Wild Animal Control Act are suggested by some submitters.

> *"Amend the Local Government Act to only permit road closure and the 'stopping' of unformed roads where alternative and equal rights of passage are created that better serve the public access interest"*

"[A] first priority is to change legislation such as the Local Government Act to require District Councils to protect and enhance public access via unformed roads."

"Amend [the] Wild Animal Control Act to exclude anti-human right clauses (i.e. onus to prove innocence."

11 Additional Matters

Key points made in submissions

- Where there is reasonable demand, many submitters state that there should be responsible vehicle access.
- Some recreational submitters feel that carrying a gun and taking a dog should be allowed for access to hunting areas.
- A few recreational submitters consider that the terms of reference could also include bicycle and horse access.
- Some submitters state that public access should be limited to walking access only.
- Many landholder submitters state that permission must be sought for access other than walking access.
- Charging for access is not supported by many submitters, unless this charge relates only to actual services provided, the maintaining of tracks or accommodation.
- Many submitters raise concerns about the amount of land now under foreign ownership in New Zealand, relating it to the criteria of the Overseas Investment Commission for the sale of land.

Background from the report

The terms of reference invited the Group "to report on any other matters that related to access that appear to require consideration by the Minister". Topics discussed include firearm use; bicycles, vehicles and animals; land management; fisheries management; Crown Pastoral Land Act; ad medium filum aquae rights; charging issues; the Overseas Investment Commission; and oceans policy. These points are pertinent, although not core to the access debate. Nevertheless, if addressed, they have the potential to improve access to New Zealand's outdoors. *(Page 96)*

11.1 Vehicles

Responsible vehicle access, including the use of 4WD vehicles, should be further investigated, according to many submitters. Several submitters emphasise that the rights of vehicle access should be available to the physically impaired and the elderly who may not be able to reach the location through different means. The distance to be traveled to a location is a factor in considering vehicle access. Other submitters state that the gradual increase in 4WD use as outdoor recreation cannot be overlooked in a review of access in the New Zealand outdoors.

> *"Demographics show an increase in the numbers of elderly citizens, many of whom are partially physically disabled. Provision should be made by the Dept of Conservation for access to conservation land by mechanised means where practicable."*

> *"We want to see that the 'rights of access to river, alpine and coastal areas' be vigorously preserved so that as wide a section of the public as possible can enjoy such areas and that they do not become the domain of any one group in society."*

11.2 Firearms and dogs

Some submitters feel that access to hunting areas should allow for carrying a gun and taking a dog. These submitters perceived a decline in opportunities in carrying firearms both across private land to get to public land and onto private land. This is an issue that users believe requires clarification, as hunters feel that there should be provision for carrying unloaded firearms to hunt on public land.

Some submitters also hope that controlled dogs would be permitted on most public accessways.

> *"In many cases, the only access from road ends to forests is via a paper road or the like and if firearms are banned, then there is no practical way that deerstalking can continue."*

> *"We see a way forward could be that firearms can only be carried across land and not used on it without permission. They should always be in an unloaded condition with ammunition carried separate to the firearm. Dogs must either be in a vehicle or on a lead at all times until passage is completed."*

11.3 Bicycles and horses

A few submitters contend that bicycle access could be considered alongside pedestrian access. These submitters feel that much of the report is relevant to cyclists also. Future access provisions should cater for cyclists and horse riders where appropriate, state a few submitters. A few submitters note that tenure review could include provisions for bicycles, horses and vehicles. A submitter suggests that councils be directed to sort out road verges to allow foot and, where practical, horse access, within 10 years.

In general, most submitters who support access by means other than walking feel that New Zealanders are wanting more diverse recreational activities and to secure traditional activities such as hunting.

> *"At the public meeting there was interest from horse riders and cyclists to also improve their access opportunities where appropriate."*

> *"The walkway should include not only walkers but […] bikers, horse riders".*

11.4 Walking access only

According to some submitters, access should be limited to walking only. Many of these submitters are concerned about the potential threat to biosecurity and conservation values that bicycle and, in particular, horse and vehicle access may bring. A few submitters consider that irresponsible use of 4WD vehicles is causing problems in some areas, especially delicate coastal environments such as sand dunes.

> *"Stronger controls on motor vehicle access to riparian areas and the coast are essential to avoid environmental damage."*

> *"Right of access should be for unaccompanied foot traffic only and would not apply to dogs, horses, fire arms, bicycles and vehicles."*

11.5 Permission for non-walking access

Many landholder submitters grant non-walking access across private land to public land, or onto their property for activities such as horse riding, but state that permission must be sought. Of these submitters, some are concerned that if permission is not requested, the number of non-walking activities may result in a right to roam. Other submitters would like to know who is on their land and for what purpose, for farm management and safety reasons. Instances were noted in submissions on Chapter 6 of stock being shot, dogs worrying sheep and other instances of irresponsible non-walking access.

> *"We let hunters onto our land to shoot deer, pigs and goats but insist that they ask first."*

> *"One day a year – motorbikes have run of whole property. One day a year a mountain bike race is held here and on adjoining properties. Trampers, mountain bikers, shooters have access all year round except September/October (lambing), provided they contact me first. Anglermen have unrestricted access to river. Horse trekkers welcome."*

11.6 Charging issues

Many submitters who refer to charging for access support it on land only where the charge relates only to actual services provided, such as the maintenance of tracks or the provision of accommodation. User submissions on Chapter 6 note instances where users are required to purchase a key to open a locked gate, in particular for tracks on unformed roads. A few landholder submitters consider that accessways should adhere to a 'user pays' system, that rural ratepayers should not have to pay for the maintenance of access.

> *"[Would like to see] outlawing of charging exorbitant and arbitrary fees for use of access roads across private land to reach public land or rivers."*

> *"At present where farmers are exercising a degree of control over access (legally or otherwise) there is too much opportunity for commercial return at the expense of the general public and for favouritism."*

Most submitters find it unacceptable that there is charging for access to water, fisheries and wildlife, which do not attach to land title. A few submitters believe that landholders should not view access as an investment opportunity.

> *"While it is said to be illegal to sell hunting or fishing rights, access to the fishing or hunting is often denied or charged for at an exorbitant rate."*

> *"As long as land owners put in place a responsible balance of river use, to the avoidance of exclusive capture, I see no reason why they should be denied the opportunity to make money from their fortuitous locations."*

A few submitters note that DOC is able to charge for access onto public land and believe that DOC should not be allowed to charge concessions, unless the commercial activity will not interfere with conservation and private use. A few landholder submitters consider that if DOC can charge for this access, then they may themselves be justified in making a profit from access.

A few Maori submitters note that charging for access is a necessary part of gaining revenue for some parcels of land that are unable to be farmed. These submitters reserve their right to charge for access and consider that a right of the general public to access their land would remove this right.

> *"The Government proposals relate to access to such waterways along the banks of adjoining land. The fact that a general access right does not currently exist enables some of the […] Trusts to grant access rights and in some cases this can produce a significant income in respect of blocks which might otherwise be very low income producers. Granting public rights could have a serious financial impact on such blocks. This should not be countenanced."*

11.7 Overseas Investment Commission (OIC)

Considerable comment was received by submitters about the OIC giving insufficient consideration to access when allowing overseas purchase of land. Many submitters feel that the current criteria for allowing overseas investment are too lenient, with too many loopholes. Most submitters state that provision of public access must be a key factor in foreign investment. This could mean application of marginal strip provisions when coastal or riparian land is sold, or through other means mentioned by submitters. Some submitters suggest that public access to the coast and rivers should occur on the sale of land.

Some submitters recommend that the OIC be instructed not to approve foreign land sales that exploit natural resources or charge for access. Further, overseas purchasers of rural land must be made aware through education of customs regarding access and rural social conventions.

> *"The Overseas Investment Commission should not approve land sales where the proposed landholder or their plans for development, e.g. a hunting/fishing safari operation, would endanger public access values."*

> *"It could be a requirement of Overseas Investment Commission approvals that any waterways identified on private land be appropriately subject to a Queen's Chain condition and that this be legalised as part of approval for sale processes."*

> *"Legislate that new land owners – especially foreign buyers – without our NZ philosophy about access, must provide Public Access to rivers and coasts."*

11.8 Ad medium filum aquae rights

A few submitters state that ad medium filum rights (AMF) should not continue to exist as they do not contribute to public access and seek to avoid overseas situations where individuals are prohibited from standing on certain banks and riverbeds.

One submitter suggests that AMF rights should not be deemed to exist after 20 years.

> *"As the Wainuiomata River is one of the few in New Zealand where the Land Titles include the bed of the river as part of the adjacent land, this would appear to be a historical anomaly. Perhaps, as part of this review, consideration should be given to bringing this river into line with other New Zealand rivers."*

12 Towards a New Zealand Access Strategy

Key points made in submissions

- Submitters who directly support the strategy outlined in this Chapter make several additional suggestions for the content of an access strategy.

- The large number of submitters who did not respond to this Chapter indicate their support for the five objectives and for the general principle of public access.

- Of the submitters who directly addressed the question of whether an access strategy is necessary, most do not consider that a strategy as proposed by the report is essential. They prefer local case-by-case solutions or believe that current access processes are working well.

- Many of those submitters who do not support an access strategy in its entirety support components of it and their responses are covered in other chapters.

Background from the report

The Group supports the development of a **New Zealand access strategy**. The Group believes that such a strategy is essential if traditional social conventions and the expectations of tangata whenua and the public for access to public land and along the margins of rivers, lakes, the coast, mountains and forest, are to be maintained. This report could be the basis for such a strategy.

The strategy would have five objectives:
- strengthening leadership;
- improving certainty;
- embracing the Queen's Chain ethos;
- encouraging negotiated solutions; and
- improving current legislation. *(Page 98)*

12.1 Support for an access strategy

The proposed access strategy is directly supported by some submitters who feel that the five objectives cover all requirements of access in the New Zealand outdoors. Submitters who have a vision for access consider that access should be made available for everyone, on most occasions, both now and in the future. Some submitters wish to incorporate the private rights of landholders with the public desire to recreate in the outdoors. Some submitters state that an access strategy would recognise the importance that New Zealanders have traditionally accorded culture and recreation based on the outdoors, whether it be in the mountains, countryside, on rivers and lakes or the coastline.

"The […] Council strongly supports the proposal to prepare a New Zealand Access Strategy, which it sees as being necessary to adopt a more strategic and effective approach to public access to the outdoors."

"We fully agree with the need for a New Zealand Access Strategy. We believe it should address the following:

1. *Implementation of national and regional structures to advocate for public access, and to identify, negotiate and resolve walking access issues.*

2. *Allowing for the easily-accessible dissemination of information on legal access to the public."*

"The access strategy should incorporate the 5 objectives as outlined in the Land Access Report. Matters that should be addressed in the strategy include but are not limited to

- *Removal of liabilities and responsibilities of landholders for the actions of users*
- *Prioritising of access negotiations to ensure maximum access to great areas of greatest importance to allow best use of resources allocated*
- *Provision of public information*
- *Mediation facilities".*

Many of these submitters support a well-balanced access strategy that makes concessions to the requirements of both landholders and users and land users, and see merit in a co-ordinated approach with local involvement.

Submitters, mainly users, perceive a strategy that provides for high quality access (HQA) involving:

- free, fair and reasonable access;
- certainty of information on location and type of access;
- access along waterways that is a right, but not the right to roam, with any restrictions being well-understood;
- access open to both individuals and organised groups;
- enduring access;
- specified standards at a national level but flexibility at regional levels;
- respect for private property rights (includes a code of conduct);
- clarification of legislation pertaining to access.

12.2 Support for the five objectives

Support for the five objectives and for the general principle of public access is given by a large number of submitters who did not directly respond to this chapter. Chapter 10 covers many of these responses in greater detail.

12.3 Need for an access strategy

The question of whether an access strategy is necessary was answered by only a third of submitters, mainly landholders. Of those who responded, over half do not consider that a strategy as proposed by the report was necessary. Most do not give a reason why they do not support a strategy. Some landholder submitters state that there is not enough evidence of an access problem and a lack of proof that there will be greater loss of access in the future, therefore they consider that a strategy would be inappropriate. A few feel that a strategy would give the access issue a higher profile than they perceive that it needs.

> *I do not believe a New Zealand Access Strategy is required. I have not seen any compelling evidence that the NZ public are crying out for this. Advocates of a law change on this issue claim that access to NZ's outdoors is part of the NZ psyche but I believe property rights are even more entrenched in the NZ psyche and that most New Zealanders would find it disturbing that we are contemplating interfering with current property rights."*

> *"We do not believe an access strategy is required. There are millions of acres of public estate lands. There is extensive existing legal access to them via legal and paper roads, marginal strips and, in some areas, the Queen's Chain. What is required is the means for the public to be made aware of these existing accesses."*

12.4 Alternative suggestions for an access strategy

Some submitters who do not advocate an access strategy indicate that access arrangements should be found locally and be based on case-by-case solutions. Several submitters state that there are already community, farming and recreational groups that currently undertake leadership roles negotiating access. Most of the submitters on this point assert that existing access arrangements are working well and allow landholders to apply necessary restraints. Under the Local Government Act, a submitter notes, councils are required to work with communities and agree on outcomes. If a community decided to cut funding to walkways, the strategy could not override that.

> *"The submitter's view is that there is already an access strategy which is well understood in terms of land subdivision and other resource consent processes. It is enhanced by land acquisition by local and regional councils. If more land and better access is required then it should be obtained through those processes so the burden falls fairly on all New Zealanders."*

> *"We have DOC, Fish & Game, district and regional councils, that can [have] a [role] in access strategy."*

12.5 Support for aspects of an access strategy

Many submitters who do not support an access strategy in its entirety support components of it and their responses are covered in other chapters. Some submitters make recommendations on the proposed objectives should an access strategy proceed.

Glossary and Abbreviations

Access strip	A strip of land created under the Resource Management Act 1991 for the purpose of allowing public access to or along any river, or lake, or the coast, or to any esplanade reserve, esplanade strip, other reserve, or land owned by the local authority or by the Crown (excluding land held for a public work)
AMF	The literal translation of ad medium filum aquae (AMF) 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
Cadastral map	A representation at a scale of the boundary features relating to land in a district in a graphic or digital form
Curtilage	An area that surrounds a building. This area could be subject to access restrictions in the interests of privacy and safety. The extent of a curtilage will depend on the size, setting and use of the building
DOC	Department of Conservation
Esplanade reserve	Land reserved under section 229 of the Resource Management Act for various listed purposes, of which public access may or may not be included. The land is owned by the territorial authority
Esplanade strip	A strip of land registered under section 229 of the Resource Management Act for various listed purposes, of which public access may, or may not be, included. The land remains vested in the private owner
Group, the	Land Access Ministerial Reference Group
Hapu	Maori sub-tribe or groups of families within an iwi
HQA	High quality access
HSEA	Health and Safety in Employment Act 1992
Iwi	Maori tribe
Kai moana	Seafood
Landholder	For the purposes of this analysis, a landholder is an owner/occupier/lessee of land
LINZ	Land Information New Zealand
MAF	Ministry of Agriculture and Forestry
Mahinga kai	Traditional food or resource areas

Manawhenua	Traditional status, rights and responsibilities of iwi, hapu or whanau as residents in their territory
Marginal strip	Strip of land reserved from the sale of Crown land along banks of rivers and lakes and above the high tide mark held for conservation and access purposes. Reserved from disposition of land for Crown
OIC	Overseas Investment Commission
Private land	Is taken to mean, for the purposes of this analysis: • any land (other than unformed legal road) that is for the time being held in fee simple by any person other than the Crown; • any Maori land within the meaning of the Maori Affairs Act 1953; • any land (other than unformed legal road) held by a person; under a lease or licence granted to that person by the Crown (without any requirement for the provision of public access)
Public land	Includes parks and reserves held by local government or the Department of Conservation for a variety of purposes, and Crown lands and forests held by LINZ, State-owned enterprises, and licensees which are available for public recreation
PWA	Public Works Act 1981
Queen's Chain	Popular term used to describe land under various mechanisms and legislation that enables public access alongside rivers, lakes and the coast
Report, the	*"Walking Access in the New Zealand Outdoors"* (2003)
Riparian land/margin	Land alongside rivers or lakes
RMA	Resource Management Act 1991
User	For the purposes of this analysis, a user is someone who uses land with intent to recreate or to reach a particular location in order to recreate
Waahi tapu	A place sacred to Maori in the traditional, spiritual, religious, ritual, or mythological sense