

WALKING ACCESS THE CURLY QUESTIONS

**Report from Seminar
held at
Kaituna Homestead
on
June 9, 2017**

Hosted by
Rod Donald Banks Peninsula Trust
in conjunction with
NZ Walking Access Commission

Acknowledgements

Rod Donald Banks Peninsula Trust acknowledges and thanks

- All landowners who provide walking access across their land on Banks Peninsula.
- Geoff Holgate, Regional Representative from the Walking Access Commission for assistance in pulling together the panel members,
- Panel members Ric Cullinane, Donna Burt, Ashley-Jayne Lodge, Lynda Murchison, Andy Thompson and Geoff Holgate for their contributions on the day
- All who attended the seminar
- Sharon and John Robertson from Kaituna Homestead for providing a delightful venue and catering.

Executive Summary

Rod Donald Banks Peninsula Trust is working to improve walking access on a network of well-marked and managed tracks around Banks Peninsula. The Trust acknowledges and thanks the many private landowners who allow the public to walk across their land.

Landowners often express concerns about health, safety and public liability when walkers pass through their land. Hence the Trust, with support from NZ Walking Access Commission, assembled a panel of experts at Kaituna Homestead on June 9, 2017, to discuss the current legislation around health and safety and invited landowners to ask probing questions. The event was well received and attendees requested the report be made public. Key findings are:

- The Health and Safety at Work Act 2015 (HWSA) is principally aimed at worker safety. The public accessing rural land on tracks are visitors, not workers.
- On a farmers land, where access is not charged for, the HWSA only applies around farm buildings and in areas where work is actively taking place. It does not apply to unattended stock grazing in paddocks and the public unless work is being carried out at the time
- Provided the walking access on tracks is not charged for, the legal duty to warn to visitors of hazards and to ensure the area is safe is restricted to areas where work is taking place. If walkers are being charged then the tracks are considered a workplace and the HWSA provisions apply.
- Visitors do have responsibilities to look after their own safety and for their decisions about the risks they take, and for others under their care and responsibility.
- Landowners and managers should be cognisant of public walking tracks through their land and take reasonable steps and precautions to ensure public safety, such as erecting warning signs during calving or when there are out of the ordinary hazards, closing tracks for these periods or diverting around work areas. After work has been carried out on or near a track and when it is open to the public, it should be in a safe condition (for example sharp tools or objects should not be left about).
- The same responsibilities apply to unformed legal roads being used as part of a farm.
- Where tracks are managed by a third party agency such as DOC that agency is principally responsible for managing visitors and for any structures such as track markers. Landowners should contact the agency if such structures are damaged.
- The public are legally allowed on unformed legal roads, including in vehicles. While vehicles may be deterred through barriers, only the Council has the legal power to control or preclude them.
- The NZ Walking Access Commission can become involved in resolving disputes around access, and Walking Access Easements under the Walking Access Act 2008 provide a simple and effective mechanism to clarify rights and responsibilities around public access.
- The Rod Donald Banks Peninsula Trust will follow up on suggestions from the seminar to develop standardised messages for signage, provide more information on behaviour in a rural environment in its walking products, and to work with Council on issues on unformed legal roads.

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1 Background

Rod Donald Banks Peninsula Trust is working to improve walking access on a network of well-marked and managed tracks around Banks Peninsula. The Trust acknowledges and thanks the many private landowners who allow the public to walk across their land.

Landowners often express concerns about health, safety and public liability when walkers pass through their land. Websites and pamphlets give general information, but don't necessarily answer the detailed questions.

Hence the Trust, with support from NZ Walking Access Commission, assembled a panel of experts and hosted a seminar at Kaituna Homestead on June 9, 2017, to discuss the current legislation around health and safety and to answer landowners detailed questions.

All landowners with public walking tracks on their properties, land management agencies such as Department of Conservation and Christchurch City Council and the Community Board were invited and the event was well attended.

This report presents the findings of the day and outlines actions to be taken by the Rod Donald Banks Peninsula Trust going forward.

2 Presentations

The event was chaired by the Trust Manager Suky Thompson, who opened the seminar with a brief presentation on the formation and aims of the Trust and some of its work to date. See Appendix A.

2.1 Panel members

The expert panel consisted of:

Ric Cullinane	Operations Manager, NZ Walking Access Commission
Geoff Holgate	Regional Field Advisor, NZ Walking Access Commission
Ashley-Jayne Lodge	Senior Associate, Cavell Leitch
Donna Burt	Project Manager, WorkSafe
Lynda Murchison	Provincial President, North Canterbury Federated Farmers
Andy Thompson	Mahannui Area Manager, Department of Conservation

Presentations on the Health and Safety at Work Act 2015 (HWSA) were given by Ashley-Jayne Lodge and Donna Burt from WorkSafe. These are reproduced in Appendix B and Appendix C.

Ric Cullinane introduced the NZ Walking Access Commission, a Crown agency formed in 2008 to protect New Zealand's heritage by promoting free, certain, enduring and practical access to the outdoors. The Commission provides public education on rights and responsibilities, and assists with dispute resolution. More information about the Commission is provided on its website www.walkingaccess.govt.nz.

The Commission provides information about where there are rights of public access on its mapping system WAMS www.wams.org.nz.

A copy of the Commission leaflet on farmer responsibilities to visitors is in Appendix D.

2.2 Relevant aspects of HSWA to public walking access

The following gives a summary of the key points made during the expert presentations.

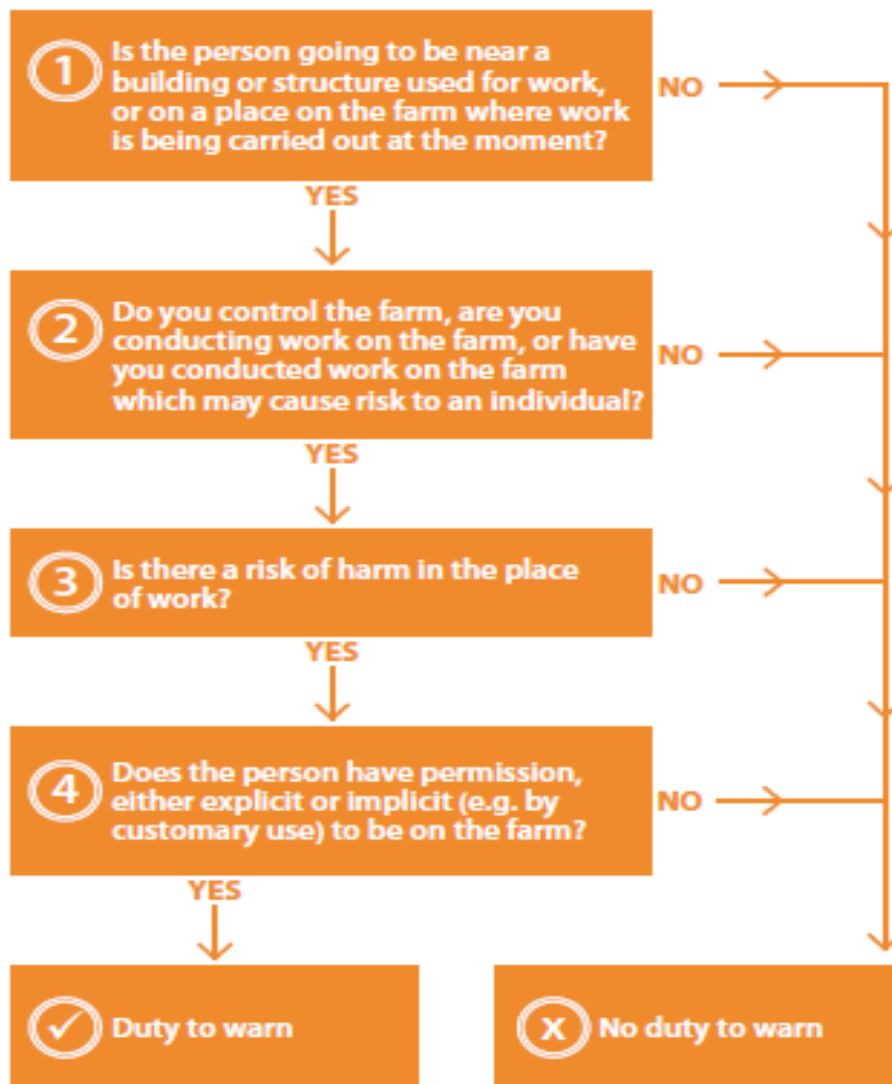
- The Health and Safety at Work Act 2015 (HSWA) is principally aimed at protecting workers.
- The public walking across farm land are classified as visitors, not workers.
- Landowners must take all reasonably practicable steps to ensure that the work areas are safe and do not pose a health and safety risk to anyone, including visitors.
- On rural land (farms and properties run for conservation purposes) the work area can be described as a “bubble” around the farm buildings and any areas of the property where work is actively taking place. “Work is actively taking place” means that workers are present carrying out a work activity. It does not apply to stock grazing unattended.
- Providing no charge is made for crossing the land, land owners are **NOT** responsible for the safety of walkers outside of the work area. If a charge is made for the access, then the areas where the visitors are accessing are deemed as work areas and the landowner is responsible for their safety in these areas under the HWSA.
- People visiting rural land have a responsibility to take reasonable care that their actions (or lack of action) do not put themselves or others at risk. They must comply with reasonable instruction given by the landowners as far as they are able.
- Reasonable steps of a landowner involve weighing up the risks and the degree of harm that might result from that risk.
- Therefore if a landowner knows that there is a public walking track across their land, and work is taking place along or near the track that might not be reasonably expected on a farm and could endanger the public, reasonable steps might include one or more of the following:
 - erecting a warning sign
 - temporarily diverting people around such an activity
 - temporarily closing the track.
- The site should be left in a safe state after work is completed and at any time when the track is open.
- ACC covers work and non-work injuries.
- Landowners should err on the side of caution if they are unclear about what constitutes a risk or their responsibility.

2.3 Duty to Warn Summary

The following chart provided by the Walking Access Commission summarises when there is a Duty to Warn the public visiting rural properties and who is responsible for doing this. Note that the term farm is used on this chart, but the seminar clarified this applies to all

extensive rural properties, whether they are farmed or used for other purposes such as conservation.

Figure 1 Duty to Warn flowchart



This clarifies that the duty to warn applies only to people who have permission to be on the farm (including the public on publicly advertised tracks), are near buildings or places where work is being carried out and where there is an actual risk of harm. The duty applies to the controller of the farm and the person conducting the work.

3 Curly questions

The following topics were further explored during the discussion to assist with judging whether or not there was a reasonable hazard, how and when to apply caution, and where responsibilities lie when a third party agency manages a walking track across rural land.

3.1 Workplace activities

Public walking tracks give an implicit permission for people to be on the part of the farm crossed by the walking track route, whether the farmer is aware or not of their presence at any particular time.

Area where HWSA applies to walkers

Therefore when work is being actively carried out by workers on a farm or rural land on or near a public walking track, the HWSA applies.

The ownership of the land does not alter the responsibilities under the HSWA Act i.e. there is no difference between tracks across private land and unformed legal road used as part of a farm. The person conducting a business or an undertaking (PCBU) responsible for the work has the same responsibility toward the public.

Type of work where warning or other actions needed

The duty is to warn visitors of any hazards created by the work that would not normally be expected on a farm. If a risk exists the landowner would need to reasonably manage these risks for visitors.

Examples of when warnings might be issued included tree felling, spraying or a trapping program going on. It might be reasonable in addition to warning to divert the track around the activity or close it temporarily.

Worksites when work is finished

When work is not actively being carried out (such as overnight or after it has finished) then there is a duty to leave the area with an open public walking track so that it is safe to pass through. For example, if there is a dangerous overhanging branch while tree felling work is underway, the track should not be re-opened until it has been removed. As part of work completion, there should not be sharp metal objects left behind on a track, or wires across it. However, a track might be left in a muddy state after work, but this was considered an act of nature and a landowner or contractor would not be responsible for acts of nature.

Arguably there is a duty to warn if there is a known hazard on the track.

Assisting the public is not work

Assisting members of the public who have injured themselves or run into difficulties does not constitute work. Landowners are not legally required to assist members of the public, but in practice often feel a moral duty and do get involved in assisting such people – for example dragging out a stuck vehicle with their tractor, or transporting an injured person. Rendering such assistance, even when using farm machinery to do so, does not constitute work and the landowner is not therefore liable under the HWSA.

Defining trespassers

The implicit permission for the public to walk on a walking track does not give the public the right to stray from the track to other areas of the farm, and they become trespassers if they leave the track or enter buildings.

It would be reasonable for a person to deviate around a hazard, such as a cow and calf or other stock, and then return to the track without being considered a trespasser.

3.2 Stock

Farm animals grazing unattended in a paddock do not constitute a workplace.

No legal liability for behaviour of stock

Hence landowners are **not** responsible if a member of the public is injured by unattended farm stock grazing. This applies to all stock, including bulls, stags and cows and calves. There is no legal duty to warn the public of stock as they are part of normal farming activities.

Sensible precautions

However, it is sensible to erect signs where tracks enter working farms to inform the public that they are crossing farmland, and therefore to expect farm activities such as stock grazing.

Cows with young calves were considered by all present the most likely stock to put the public at risk, particularly as people unused to stock may be tempted to pat the calf or to get between the cow and calf. Therefore erecting a warning sign or closing tracks during calving while not a legal requirement, was a reasonable step to take, and this applied to other stock that might reasonably be considered as dangerous.

Mustering is work

If the farmer is mustering, then work is taking place and there is a duty to warn or take steps to divert the public if the stock are considered a risk to walkers.

3.3 Relationships to agencies managing tracks

Tracks across rural land are often managed by third party agencies rather than the land owner. For instance, the Department of Conservation manages the Te Ara Pātaka track, Christchurch City Council manages the Okuit track. Where tracks involve a third party agency in their management then that party is responsible for managing the visitors.

Agency responsible for track assets

The agency is responsible for determining the appropriate classification for any tracks they manage and for the assets they put in place such as signage, track marking or stiles to manage the visitors accordingly. It is incumbent upon the agency, not the landowner, to mark tracks well to enable the public to keep to the agreed track line.

Decisions to close tracks

Where an agency manages a track, it should be the one to make a decision about closing a track due to natural conditions such as fire or earthquake risk, or in conjunction with the landowner over closure periods such as for lambing.

Landowners are not responsible for the public getting injured in fires or earthquakes, nor liable for a fire started by a member of the public on their land.

Landowner/agency communications

It would be useful for landowners to inform the agency if they have concerns that (for instance) markers are missing or stiles in poor condition, but it is not their legal responsibility to do so. Under DOC guidelines, tracks should be marked so that from each marker, the next one can be seen.

Landowners should inform the agency if they are carrying out work along or near the track that may affect the public. The contact for DOC is ???. The contact for Christchurch City Council is ???.

3.4 Public Education

Further education of the public about appropriate behaviour around stock and on rural land could be undertaken by landowners, but it was more logical if this work was carried out by agencies responsible for promoting tracks such as the Department of Conservation, Christchurch City Council or the Rod Donald Banks Peninsula Trust.

Advance information

The public are more likely to abide by the information (such as track closures) if they have knowledge in advance. Once they have travelled to a site, or encounter a closure some distance into a walk, they are more likely to ignore it. Hence information on websites and publications is as important as signs on site.

Appropriate information

Information and messages needed to be appropriate to the visitors using the track and different standards apply to different types of tracks.

Visitors are responsible for their own decisions and the risks they take. . A copy of the DOC Visitor Risk Management Principles is given in Appendix E.

Urban visitors and those unable to read English also need to be catered for.

Standard public information

Department of Conservation already provides a page on its website providing information to assist with safety in the outdoors and advance planning with links to more detailed information sources. This includes video and other languages.

<http://www.doc.govt.nz/parks-and-recreation/know-before-you-go/safety-in-the-outdoors/>

Consistent local information

It would be good to have standardised signage on Banks Peninsula so that the public received the same messages and these were reinforced with each encounter. Messages suggested by landowners participating in the seminar included identifying that the properties were Working Farms and to Keep away from Stock.

The Trust's Walking Directory and brochures should include more information about behaviour in rural areas and how to behave around stock.

It would be useful to also develop a Phone App as most people are getting information from their phones.

Involvement of WorkSafe with walking tracks

WorkSafe Inspectors can arrive at farms or other workplaces unannounced.

Identifying WorkSafe inspectors as bona fide

WorkSafe Inspectors are not required to wear uniforms or badges, but are required to and must show their certificate of appointment (warrant).

Places inspected

Inspectors normally only visit the areas where work is taking place, and do not walk across the remote parts of farms, but might do so if looking for the farmer.

The farmhouse does not constitute a workplace.

Walking tracks do not constitute a Workplace (unless work is being carried out on them) and hence WorkSafe does not inspect them.

3.5 Potential future issues

New technologies are presenting new challenges for landowners and walking track managers.

Drones

There was concern that walking access might make it easier for people to fly drones over private properties. Drones were classified as aircraft and must comply with CAA regulations. They are not allowed to fly above property below 500feet without landowner permission. It would be legal to shoot down a drone above private property in a rural area, provide firearms legislation was complied with.

The website www.airshare.co.nz gives more information on drone regulations.

E-bikes

Mountain biking is increasingly popular, and permitted on some tracks on Banks Peninsula. There had been problems with the speed of mountain bikes affecting stock and other walkers.

Battery assisted bikes, known as e-bikes, may blur the lines between a bicycle and a motorbike. There is a clear definition of an e-bike on the Transit NZ website. (If the power output is less than 300w, it is counted as a bicycle).

<https://www.nzta.govt.nz/vehicles/vehicle-types/low-powered-vehicles/>

Tourism growth

The number of tourists are predicted to rise and there is concern about managing the impacts of larger numbers of walkers on popular tracks and about more walkers who are unfamiliar with farming and behaviour in rural areas. This is exacerbated because people are relatively coddles in cities with regard to safety (for instance the number of cones in Christchurch) and the attitude the government has shown to rural areas with regard to tourism impacts from freedom camping.

3.6 Unformed legal roads

The public have a right of access on unformed legal roads at any time, including with horses, dogs, firearms and in vehicles.

Duty to warn on unformed legal roads

Adjoining landowners who may occupy the unformed legal road and use it for grazing in conjunction with the paddock it passes through are not legally allowed to bar the public from access, but have the same duty to warn if they are carrying out a work activity on the unformed legal road as on private land.

If a track using an unformed legal has been marked as closed for a farming activity, such as calving, and a person ignores the warning, the landowner has no liability.

Closing unformed legal roads to vehicle use

There is concern about the use of vehicles on unformed legal roads for many reasons, including that vehicle users can more easily carry alcohol and firearms, remove poached or

stolen items, cause damage to the track surface including areas regenerating into native forest and are more likely to get stuck and need assistance from nearby locals for removal.

Vehicular access is often constrained in practice by placing a boulder on a track or making gates hard to open (with locks or wire ties) and providing a stile as an alternative for walkers, but there is no legal right to obstruct access on a road

Christchurch City Council responsible

The Christchurch City Council owns the unformed legal roads and is responsible for their management. The Council can pass bylaws restricting access for management purposes such as protecting grass track surfaces.

3.7 Walking Access Easements

Walking Access Easements under the Walking Access Act 2008 are simple documents to draw up.

Conditions

They enable landowners to define conditions around walking track use, such as closure periods and types of use, including restrictions such as no dogs, firearms, bicycles and vehicles.

Defining controlling authority

Under a Walking Access Easements the controlling authority and their responsibility to the track and its maintenance are defined. This clarifies relationships and the responsibilities of third party management agencies.

Legal Roads

Walking Access Easements cannot be applied to legal roads, formed or unformed. On Banks Peninsula many tracks are routed on unformed legal roads and partially on private land, causing management confusion and opening them up to abuse by vehicles.

A potential way forward would be for Christchurch City Council to stop some unformed legal roads that are used as walking tracks and where vehicular access is an issue, and to gazette to retain public access through Walking Access Easements instead.

4 Follow-up actions

Guided by the seminar discussion, the Rod Donald Banks Peninsula is taking the following actions:

- A copy of this report is to be sent to all attendees and made available on www.roddonaldtrust.co.nz. Attendees indicated that they wished their email addresses to be included.
- Work with landowners, agencies and the Walking Access Commission to develop common signage, or common wording to be used on signage regarding Health and Safety information, particularly on farms.
- Include more information on behaviour in a rural environment, including around stock, in its Banks Peninsula Walks Directory and associated website



www.bpwalks.co.nz, and pointers to standard information, and investigate phone apps further.

- Explore with the City Council ways in which vehicular access on unformed legal roads used as walking tracks can be better controlled, including the possibility of using Walking Access Easements.

Some specific areas that were brought up by individuals include:

- Investigating routing the lower part of the Okuti track off the formed road to avoid potential collisions with residents vehicles
- Mt Herbert Walkway signage

Appendix A Introducing Rod Donald Trust presentation. Sukey Thompson, Rod Donald Banks Peninsula Trust Manager

Walking Access


The Curly Questions

Seminar and Panel Discussion
June 9, 2017
Kaituna Homestead

What is Rod Donald Banks Peninsula Trust?



- Charitable Trust
- Founded 2010 by Christchurch City Council
- Funded from sale of Ashburton Farms
- www.rodonaldtrust.co.nz



Trust Board

- 9 Trustees
- 7 appointed by Council
- Board from July 1
- Chair - Simon Mortlock
- Cynthia Roberts
- Chrissie Williams
- Andrew Turner
- Bob Webster
- Richard Suggate
- Maureen McCloy
- Paul McNoe
- Bryan Storey



Trust Manager – Sukey Thompson



Rod Donald Trust goals

- Stocktake in 2011
 - Find out what was working well
 - Support these efforts and groups
 - Fill the gaps
- 4 strategic pillars
 - Access
 - Biodiversity
 - Knowledge
 - Partnership
- Use capital to create an enduring legacy






Trust Walking Strategy Goals

- amenity for local residents
- connect rural communities
- attract tourists and visitors
- support rural communities
- vessel for public education
- develop resilience
- develop young people
- well marked and managed tracks
- NOT right to roam




Environmental awareness through walking access

- Get people out engaging with the environment
- Provide knowledge about the biodiversity and peninsula communities and land use
- Encourage respect in a rural environment
- Build the environmental stewards of the future

Past projects

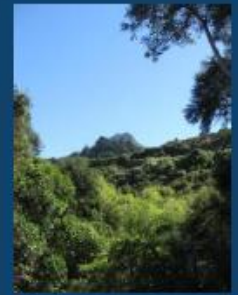
- Plant Life on Banks Peninsula
- Contribution to Saddle Hill Reserve purchase
- Contribution to Purple Peak Curry Reserve purchase



banks peninsula trust
10 PIONEER BLVD, CHRISTCHURCH

Ongoing projects

- Biodiversity partnerships
- Banks Peninsula Conservation Trust
- Orton Bradley Park
- Josef Langer Trust



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Public walking information

- Banks Peninsula Walks Directory
- Brochures
- Website - www.bpwalks.co.nz



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Annual Banks Peninsula Walking Festival

- Pan-Peninsula event
- Showcase new opportunities
- Local guides impart knowledge
- Support local business



- 2017 - Fire prevention and regeneration theme

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Flagship project Te Ara Pātaka/Summit Walkway

- Existing network of tracks
- 2.5 day tramp with 2 huts
- Links Lyttelton and Akaroa Craters
- Partnership with DOC
- Ideal for novice trampers and families



- Aim is a well marked and managed tracks
 - Good Signage
 - Waymarking
 - Tracks maintained
 - Long term sustainability

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Formal opening November 2016



- Signage and waymarking completed
- 100 people on Mt Herbert coming from 6 directions

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Timed to coincide with a Harry Ell centenary



Matt Clements, Harry Ell's great great grandson at 100 year old Packhorse Hut



Signage reflecting landowner requests

Department of Conservation
Te Ara Pātaka

Part 109
Footpaths

Te Ara Pātaka (Sumner Walkway)

- Mt Herbert/Te Aho Pihiki summit: 2 hr 30 min / 3.5 km
- Packhorse Hut: 5 hr 30 min / 12 km
- Gobbins Pass: 8 hr / 18 km

Alternative track exits

- Kaituna Valley via Mountaineer Track (north): 2 hr 15 min / 6km
- Purua saddle via Mountaineer Track (north): 1 hr / 7.5 km
- Disarmed Harbour via Mt Herbert Walkway: 5 hr / 14 km
- Octon Roadley Park via Mt Herbert Walkway: 5 hr / 15.6 km

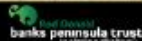
Tracks close private landhold. Keep to marked track
Tracks closed for landing 8 August to 13 October
Check flight status at www.airnz.co.nz



Rod Donald Hut



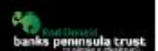
- Second hut at track midpoint
- Family friendly
- DOC Booking system
- Signage to assist novices



Participation rates indicate success

- Rod Donald Hut usage this financial year
- 44% occupancy
- 36% under 18

Month	Adults	Children	Total users
July	60	48	108
August	30	12	42
September	23	21	44
October	58	50	108
November	58	17	75
December	116	72	188
January	136	95	231
February	97	22	119
March	67	17	84
April	89	67	156



Respecting and Thanking landowners

- Your support is essential
- Public access needs to work for you and your property
- Trust respects landowners and seeks to work in partnership
- Understand, manage and resolve issues that affect you



Thank you on behalf of the walking public



Different types of access

- Private walks - charge made for use
- Individual permission granted - ie phone call
- Public track - marked, managed, advertised by another agency with landowner permission - ie Te Ara Patata
- Unformed Legal Road - not marked or advertised as a walk
- Trespassers - no permission, no unformed legal road, no advertised track



Walking Access – implications of the Health and Safety at Work Act 2015

Presented by:



Ashley-Jayne (AJ) Lodge
Employment

Major changes

- Risk-based rather than hazard-based
- A more proactive and preventative risk management approach
- Major changes:
 - Classification of a PCBU – a Person Conducting a Business or Undertaking – as the primary duty holder
 - Positive duty of due diligence on those in senior management roles
 - Tiered, more stringent penalty regime



Reasonably practicable?

22 Meaning of reasonably practicable

...reasonably practicable, in relation to a duty of a PCBU set out in subpart 2 of Part 2, means that which is, or was, at a particular time, reasonably able to be done in to ensuring health and safety, taking into account and weighing up all relevant matters, including—

- the likelihood of the hazard or the risk concerned occurring; and
- the degree of harm that might result from the hazard or risk; and
- what the person concerned knows, or ought reasonably to know, about—
 - the hazard or risk; and
 - ways of eliminating or minimising the risk; and
- the availability and suitability of ways to eliminate or minimise the risk; and
- after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Health and Safety at Work Act 2015

- Came into force on Monday 4 April 2016.
- Five years in the making.
- Result of the Pike River mining disaster in November 2010, and the Christchurch earthquakes in September 2010 and February 2011.
- These disasters generated three reports:
 - Report of the Royal Commission on the Pike River Coal Mine Tragedy
 - Report of the Independent Taskforce on Workplace Health and Safety
 - Working Safer: A blueprint for health and safety at work
- Each identified common issues with our previous health and safety legislation, and the Health and Safety at Work Act 2015 was born.



PCBU

= Person Conducting a Business or Undertaking

The PCBU owes the **primary duty of care** to ensure, so far as is reasonably practicable, the health and safety of its workers, other workers who are influenced or directed by the PCBU; and that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

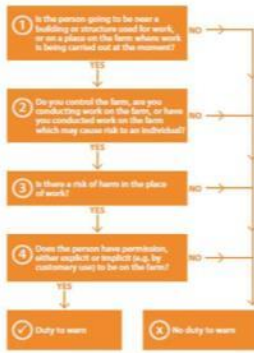


Duty of a PCBU who manages or controls workplace

37 Duty of PCBU who manages or controls workplace

- A PCBU who manages or controls a workplace must **ensure**, so far as is reasonably practicable, that the **workplace**, the means of entering and exiting the workplace, and anything arising from the workplace are **without risks to the health and safety of any person**.
- ...
- For the purposes of subsection (1), if the PCBU is conducting a farming business or undertaking, the duty owed by the PCBU under that subsection—
 - applies only in relation to the **farm buildings and any structure or part of the farm immediately surrounding the farm buildings that are necessary for the operation of the business or undertaking**;
 - does not apply in relation to—
 - the main dwelling house on the farm (if any); or
 - any other part of the farm, unless work is being carried out in that part at the time.

Duty to warn



walkingaccess.govt.nz

Public liability

29 Insurance against fines unlawful

1. To the extent that an insurance policy or a contract of insurance indemnifies or purports to indemnify a person for the person's liability to pay a fine or infringement fee under this Act
 - a) The policy or contract is of no effect; and
 - b) No court tribunal has jurisdiction to grant relief in respect of the policy or contract...

Practical tips

- Communication is key
- Common sense evaluation – could someone be at risk?
- If you are not sure whether there is a risk or hazard, err on the side of caution.
- If you are not sure whether you are responsible, err on the side of caution. The HSWA is all encompassing and designed to be a catch all for responsibility.
- Turn your mind to the issues on a regular basis, and record everything in writing.

HSWA ACT 2016

Purpose

The main purpose of this Act is to provide for a balanced framework to secure the health and safety of workers and workplaces



KEY POINTS RE FARMS

- Farmers are not responsible for the safety of people crossing a farm in non-work areas and away from farm buildings.
- Having a charge in place for attending an event on the farm does not change duties relating to health and safety.
- The farmhouse is not considered a workplace under the law.
- <http://saferfarms.org.nz/fact-sheets/visitors-and-events-on-farms/>



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What duties do farmers owe visitors on the farm?

- Ensure that work areas on the farm are safe, and don't pose a risk to the health and safety of any person.
- Ensure that farm buildings and immediate surrounding areas are safe for any person, including visitors. All entrances, exits and anything arising from the buildings, must not put visitors' health and safety at risk.
- Farmers are not responsible for the safety of people crossing a farm in non-work areas and away from farm buildings. However, they must ensure that work carried out as part of the business (at any location on the farm), doesn't put others at risk. If risks exist from work previously carried out (e.g. spraying of hazardous substances), then the farmer would need to reasonably manage these risks for visitors.
- People visiting a farm have a responsibility to take reasonable care that their actions (or lack of action) do not put themselves or others at risk. They must also comply with any reasonable instruction given by the farmer, as far as they're able to.

Example:

Warren allows people general access to a popular fishing spot through his farm. He decides to do some spraying using a hazardous substance on the paddocks people cross to get to the sea. Warren must take suitable actions to ensure the safety of anyone crossing the sprayed paddocks, so far as is reasonably practicable.

Examples of these actions may include:

- posting a sign on the gate/paddock fence warning people of the work underway in the area clearly marking and
- identifying risks (e.g. the paddocks where the spraying is occurring) so no one wanders into the area carrying out the spraying on a calm day so the spray doesn't drift.

Warren would not be at fault if a person injures themselves in another non-working area while crossing the farm, as long as there were no risks from work previously carried out.

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Example:

Annette is working in an area of her farm where it is unlikely other people will access.

It would not be reasonably practicable to expect her to pack her work tools up, post warning signs and mark out risks every time she left that work area.

However, if she knows other people are likely to access the area, it would be reasonably practicable to expect her to leave that area in a safe state.

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July 2016

12. Health and safety responsibilities of farmers to recreational visitors

Frequently Asked Questions



Does the new Health and Safety at Work Act 2015 significantly change the obligations farmers have to ensure the safety of recreational visitors to their land?

No. Changes made during the consultation process for the *Health and Safety at Work Act 2015* have ensured the legislation continues to enable farmers to readily grant access to recreational visitors as they have done for generations. The obligation remains for farmers to warn visitors of risks in the workplace that they wouldn't normally expect on a farm.

What are the obligations of farm owners and managers towards recreational visitors to their farms?

The obligations of farm owners or managers towards recreational visitors do not differ substantially from those under the former *Health and Safety in Employment Act 1992*. When recreational visitors enter a workplace or a place near a workplace with the farm owner's or manager's consent, the owners or managers and their workers have a duty to ensure the safety of the visitors from work-related hazards that place them at risk of harm.

As the people in charge of the workplace, the farm owner or manager and their workers have an obligation to ensure visitors are warned of any specific hazards on the farm that they would not normally expect to encounter, such as tree-felling, blasting, earthmoving machinery or pest control activities. This obligation relates only to parts of the farm that visitors will be accessing – there is no need to warn visitors about hazards that are not on or near a route they will be using.

Natural features like bluffs, landslides, rivers and wasp nests are excluded, along with

hazards you would expect to find as part of a farm operation, such as barbed wire and electric fences.

If there are explicit farm rules, for example around speed or wearing of protective gear, farm owners or managers and their workers are entitled to request that visitors obey these.

If a visitor trips over a tree-root or stone, a farm owner or manager won't be held responsible for the other person's carelessness. If the owner or occupier could not reasonably have been expected to know of a hazard, they cannot be held responsible for any harm that occurs to a recreational visitor.

Farm owners or managers have a general duty to ensure risks are identified, managed and communicated to visitors, either by themselves or by workers or contractors working on the farm. They will not be held liable for injury to unauthorised visitors where there is no opportunity to communicate.

What if there is a group of visitors to the farm? Is the farm owner or manager obliged to ensure everyone in the group is informed of hazards?

No. If a group visits, it is sufficient to give the warning to a representative of that group, on the understanding that they will inform the others.

Is there an obligation for farm owners and managers to inform visitors in writing of any specific hazards on the property?

No. The information can be passed on verbally, in an e-mail or on the phone. The important thing is for the farm owner or manager and their workers to provide up to date information.

Are landholders liable if a member of the public is injured on public land intersecting or adjoining their land (e.g. a marginal strip, esplanade reserve or strip, or unformed legal road), or injured on a gazetted Walkway crossing their land?

Usually no. Generally, persons injured as the result of an accident are covered by the *Accident Compensation Act 2001*. Only in exceptional circumstances would there be civil liability to compensate for injury.

If an incident or injury occurred as a result of work being conducted on or near the public land, then there would be liability, under the *Health and Safety at Work Act 2015*. For example, if the injury takes place on an unformed legal road and the road is being used as, or is close to, a workplace or workplace activity (such as tree felling) the *Health and Safety at Work Act 2015* applies.

What is the situation if a visitor is paying for the access, either to the farmer or to a trip organiser?

If a landholder is charging a fee for access, an activity that might have been purely recreational (e.g. access to a fishing spot) becomes a workplace activity. The landholder would therefore have the obligations of a person conducting a business or undertaking (PCBU) under the *Health and Safety at Work Act 2015*. Whether a trip or event organiser given permission to use the land has the obligations of a PCBU depends on whether individuals personally profit from the event. If a trip or event is run by a voluntary association, such as a tramping club or rogaining club, the PCBU obligations will generally not apply.

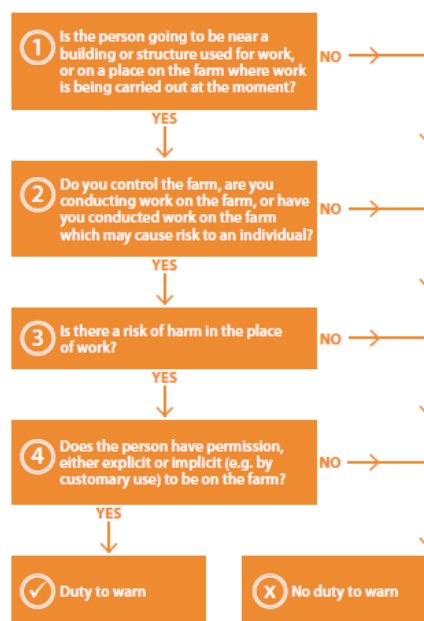
What responsibility does a landholder have for the personal property of persons exercising walking access on their land?

A landholder is not responsible for any loss or damage suffered by a person using walking access on the landholder's land unless the loss or damage is caused by the deliberate action of the landholder. This applies to walking access in general, not just on a Walkway.


Are landholders liable if a fire started by a member of the public on their land causes damage to neighbouring property?

No. The landholder is not liable for suppression costs if a fire is started on their land by someone else, even when the person responsible cannot be found. Direct admission of responsibility or proof of causation is required.

When do you have a duty to warn people about hazards?




For more information visit www.walkingaccess.govt.nz



Visitor Risk Management Policy Principles

1. The range of outdoor recreation experiences available to visitors will be preserved wherever possible.
2. DOC is responsible for assessing the risks at visitor destinations and providing information to inform visitors of those risks.
3. All practicable steps will be taken to ensure DOC facilities are appropriate for the predominant visitor group and/or activity, and meet all statutory obligations.
4. The level of skill and competence required for visitors to manage risks will be accurately represented.
5. Visitors are responsible for their decisions about the risks they take and for any others under their care and responsibility.
6. Visitors are responsible for providing the skills, competence and equipment they require to effectively manage hazards.
7. DOC will prioritise management at popular sites which have a high level of risk and a high volume of low skilled visitors.
8. DOC is responsible for working with partners to continually improve visitor risk management practices.

Read the policy [DOC-1562377](#)



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