High-quality Access

A Response to the Feedback Questions That Were Attached to the Report, *Walking Access in the New Zealand Outdoors*

Pete McDonald
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> 'There are an abundance of paper roads marked on early records of the [Otago] Peninsula. In light of the population in the mid-1800s, such roads may have been placed as lines of convenience on the maps rather than to afford practical access. Extensive searching provided no clear indication of how the design of such roads came about, however the volume of opinion from those canvassed favoured the view that they were designed in Scotland, affording access to sections sold to prospective settlers. Examination of the present NZMS 261 Cadastral series map … tends to support this as the uniform placement of roads and allotments does not account for the terrain.'
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> David Allen, 'Paper Roads and Walkways on the Otago Peninsula' (BSurv thesis, University of Otago, 1993), Page 2-7.

A PDF copy of this response is available from:
http://homepages.vodafone.co.nz/~pete.mcd/hqa/hqa.pdf

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Introduction

In January 2003, the Minister for Rural Affairs, Jim Sutton, set up the Land Access Ministerial Reference Group to examine access to land. He asked it to consider three matters:

- access to the foreshore of the lakes and the sea and along rivers;
- access to public land across private land; and
- access onto private rural land to better facilitate public access to and enjoyment of New Zealand's natural environment.

In August 2003 the Government published the Group's report, *Walking Access in the New Zealand Outdoors*. Accompanying each copy of the Report was a letter from Jim Sutton inviting public comment. The letter included a list of questions under the heading, 'Feedback'. This response replies to those feedback questions.

'High-quality Access' is a personal response, from the viewpoint of one walker. It concentrates on access across uncultivated rural land rather than on access along water margins. On access to private land, my concerns relate to access *across* rather than *to*, as I doubt whether New Zealanders are yet ready for any widespread wander-at-will liberties. We need first to attend to some more-urgent priorities.

Part 1 works through those feedback questions for which relatively short answers suffice.

Part 2, on linear access, looks in detail at public roads and walkways. The term 'linear access' in its most general sense could refer to any access confined to a line, as distinct from freedom walking. Marginal strips, esplanade reserves and strips, and the foreshore could be considered to provide linear access. So could river travel and lake travel. I restrict my examination to public roads and walkways because these two mechanisms provide access that does not necessarily follow water margins – access which an overemphasis on the Queen's Chain may have tended to relegate to a lower importance than it deserves.

Part 1: Questions and Answers

Kahikatea forest, by N M Adams, from *Trees and Shrubs of New Zealand*, published by R E Owen, Government Printer, Wellington, 1963.

Current Situation

- **What current processes for access are working well and why?**

Let's twist this question slightly. Rephrase it. Broaden it out. I think it would be helpful if we defined high-quality access. What constitutes high-quality access? In my view, high-quality access:

- allows flexibility and spontaneity;
- has no restrictions, except during such times as lambing, high fire risk, and outbreak of disease;
- is open to individuals, not just to organised groups;
- is free and gives a sense of freedom;
- is a right, not a privilege;
- is easy to find out about (marked on maps and waymarked on the ground); and
- is not conditional on the attitude of the landowner, nor threatened by a change of landowner.

It is possible to take any entry mechanism – a public road, a walkway, a marginal strip, an esplanade reserve, a Maori reservations, etc – and analyse the extent to which it meets the above criteria.

Before we look at some examples, though, I need to impose a general limitation, to avoid misinterpretation. Walking in the countryside may take place as a *linear* activity (eg following a walkway) or as an *area-based* activity (eg ranging over open uncultivated land). In this response, when I talk about 'high-quality access' I will be mainly assuming a linear activity. At the same time, it is important to remember that the highest-quality access of all, open-country access (sometimes unhelpfully called 'the right to wander at will' or 'the freedom to roam'), is already working well in several places in New Zealand that are privately owned.

Some gazetted walkways may come close to meeting the above yardsticks; I am referring to those that are based on agreements in perpetuity. But it can be miserably difficult to establish a new gazetted walkway over private land. Other forms of pedestrian rights of way might provide high-quality access, provided they are secure in the long term. Public roads could also score highly if they were signposted, waymarked if necessary, and marked as public on the widely available topographic maps. This is assuming, of course, that the roads happen to be where the access is needed.

Defining high-quality access helps us understand the situation more clearly than talking about which processes work 'well'. Arranged access, for example, can work very well for those people fortunate enough to benefit from it. But for an access route to meet the standards suggested above, it has to work well for everybody, without complications, on most occasions that it is required, over the long term. My main premise is that New Zealanders should be able to walk tracks that their grandparents walked and that their grandchildren will walk.

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The issue of arranged access might challenge the devisers of an access strategy. Single-occasion access-by-permission forms an established part of access to private rural land in New Zealand. Many landowners still readily grant such entry. Event-organisers rely on it heavily. Recreators value it highly. It frequently reveals new routes, previously known to only a few, and I hope that it continues to do so. But access at the pleasure of the landowner falls far short of meeting the benchmarks of high-quality access suggested earlier. Legally, it is a privilege, not a right. A landowner's 'pleasure' can work arbitrarily and discriminatorily. As the Report points out (page 44), in some circumstances it can even limit access to public land: 'There is real concern that access to public resources will become a pastime for the wealthy and the paying tourist, as landowners limit access across private land by selling access rights to the highest bidder.'

So the access plan, the way I see it, will somehow need to preserve and encourage arranged access while both emphasising its limitations and arguing for change. In particular, the difficult position of the individual or of the informal carload of people seems to me a basic weakness of the access culture that is developing in New Zealand, which now often favours special arrangements for organised groups or commercial operators. This weakness also seems ironic, in a country with a pioneering history coloured by enterprising individuals.

'In particular, the difficult position of the individual or of the informal carload of people seems to me a basic weakness of the access culture that is developing in New Zealand, which now often favours special arrangements for organised groups or commercial operators.'

'WORKSHOP REPORTS … MR D V PFAHLERT … It was agreed that the [Walkway] Commission should guard against the possibility of walkways being over-utilised by commercial interests. This would tax the facilities of the walkway and it would lead to some resentment from landowners if it was seen other interests were receiving financial benefit from utilising an area of their property.'

From *Proceedings of the New Zealand Walkways Seminar*, 1979.

'**Charging for Access**. The Group notes that DOC charges concession fees for commercial businesses that operate tramping and walking activities on public land … Charging for access to public resources sets a precedent as it may encourage other landowners to claim similar rights … The public believes that access to New Zealand's outdoors should be free.'

From the Report, page 43.

New Zealand Access Strategy

- **Do you think that a New Zealand access strategy is required?**

I find it hard to see how we can progress on access nationally without one. I also see an access agency as an essential part of that plan and as a permanent body in New Zealand life. If established it will always be a busy organisation, with more work to do than time and resources to do it.

- **If so, what is your vision for an access strategy in New Zealand?**

I see an access plan that defines high-quality access, perhaps not so explicitly as the terms I listed earlier, but in a similar direction to those terms. I see one that balances the rights of ownership and the rights of citizenship. This delicate balance would acknowledge the property rights of the New Zealand landowner, 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. The strategy would be optimistic, anticipating that many private landowners will continue to feel a moral obligation to allow a moderate amount of entry, free of charge; this noninterfering entry would usually be restricted to tracks. I see a strategy which states that the majority of New Zealand farmers are very capable of appreciating the importance of rural land for the recreational life of the nation. The plan would emphasises that high-quality tracks, in coherent networks, encourage participation and should be seen as consistent with national aims that value an active population.

- **What matters do you consider need to be addressed in any strategy to enhance access?**

Many matters need attention. The Group's report covers them impartially and will form a baseline from which to measure progress, or lack of it. The access debate is complicated. It is difficult, even for well-informed people, to see the whole picture and to pick priorities for action. There may be much disagreement. Yet the prime need as I see it, and the foundation for all further headway, is for Land Information New Zealand (LINZ) to produce easily available maps showing public roads and the boundaries of public lands. Several well-informed commentators have spoken of an extensive oilfield of public roads, just awaiting prospecting; we need to convert their estimates into yield. It wouldn't worry me if the access agency, if formed, put all other issues on hold while it concentrated on this maps problem.

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Having said that, filling the information hole will be no panacea. It might reveal many public roads that need shifting to be logical and useful. It could reveal more gaps in access than anyone expected. It will not create a kilometre of new public road. It will not create a kilometre of new right of way. Mapping the present access will just be a start.

• What should a New Zealand access strategy look like and why?

A Changing World

What should it read like? What general feeling should it convey? It needs to reflect a changing world, a world of lightweight fleecewear, not Swanndri jackets; of a shift from pig-hunting to mountain-biking; of clarity of information rather than she'll-be-right-ness; of waymarked tracks and urban-fringe walkway networks; of map-savvy Kiwis, hand-held global positioning systems, and national webmaps. It needs to emphasise that the countryside, as well as being the site of our agriculture and forestry, should play a multifaceted role in meeting the recreational needs of urban populations. And, regarding these urban populations, it needs to point out that it is not just our cities that need walkways on their fringes but also our small country towns, some of which have few waymarked public tracks in the private countryside surrounding them.

And what should the access plan, if adopted, say about the varying landowner attitudes and the lost informal access 'rights'? Most importantly, on change, the strategy should reflect a partial breakdown in the social conventions of access, a slow disintegration that did not begin yesterday but which began – I shall show – at least several decades ago, and which has gathered speed and is now in some senses irreversible.

Many of these aspects are mentioned in the Report. We should, though, be careful when discussing recent societal change. Some of the issues detailed in the Report have been bubbling for twenty-five years or more. In May 1979 the first New Zealand Walkways Seminar was held at Lincoln University. J T Kneebone, a past president of Federated Farmers of New Zealand, delivered the keynote address:

> … The dissemination of information to people is also very important. My view is that the best method is the visual one of using a map, preferably showing the status of the land as well as the tracking systems. Maps are easily understood …
>
> I now would like to comment on access through private land. Rural land is bought for a variety of reasons. A considerable portion of land on the outskirts of urban centres is bought by city people for rural retreats, and these people generally do not welcome others onto their properties. Their main aim in buying this land is to get away from people.

> It is also very valuable land. It is generally owned by wealthy people and as a rule, wealthy people are not generous people. Getting access onto some of that land will be a slow process but it is essential that this aspect continues to be pursued … [1]

Haven't we read this somewhere recently? Was it in August this year, after the Report was released, some talk about the emergence of 'new' rural landowners in the form of relocated townees who value their privacy? The whole of John Kneebone's keynote address makes interesting reading. (See pages 38–9.)

Linear Access Only: A Fair Accommodation

The Report (page 32) sums up the central dilemma:

> The core question is where does society draw the line between the right to exclude someone from land and the State's interest in ensuring public access, in a manner consistent with societal expectations?

New Zealand has some access problems that may never lessen appreciably without some legislative weakening of the property rights of rural landowners. The most striking widespread example, not highlighted in the Report, is the thousands of kilometres of farmtrack – eminently suitable for walking and cycling – which are presently off limits. Farmtracks that do not happen to follow boundaries or water margins are often private; they are, therefore, in Forbidden New Zealand, unless you're lucky enough to come across a farmer who believes in quaint social conventions. Yet they may potentially provide unintrusive access to places of beauty and tranquillity, or to historical sites of national importance. Or they may potentially link existing public routes.

A very different example, not a farmtrack but certainly a link, occurs in Dunedin. In a general sense it perfectly illustrates the core issue, which Parliament might eventually need to examine. In a specific sense it perfectly illustrates a point from the Report (page 12): 'The high use of existing walkways suggests that an increasing urban population will result in more pressure for better access on the margins of urban and rural areas.'

For about 90% of Dunedin residents, the most direct walking access to the Signal Hill Reserve lies through the grounds of Logan Park High School. This accessway is particularly useful for people

Public access to Signal Hill Reserve is permitted as a privilege. (Note: the sign has recently been uprooted and withdrawn from view. I understand that the route past the school may soon change, and that the new route may have a more secure status than the old one.)

who do not own cars. The nearest alternative entry points are about five kilometres away, on the outskirts of the city. So the Logan Park route forms a crucial link to urban-fringe open space. It is heavily used. Yet this pedestrian thoroughfare, as the notice reminds us, is merely a permitted route. The rights of the property-owner are paramount. The importance to society of exercise and relaxation seems to be subservient to these property rights.

In this particular case, fortunately, an informal agreement has worked well. The public are indebted to the school. Goodwill has proved highly effective. Good sense has prevailed. But that does not alter the fact that, had a dispute occurred, the law might have upheld the property rights of a single landowner over the recreational freedoms of a large citizenry.

I discuss rights and privileges again later (page 17).

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On linear access, I see an access plan that is carefully worded to mildly qualify the axiom that public access across private land is a privilege, not a right. This generally accepted principle may have worked well – in a balanced way – in the past; yet it creates tensions when a landowner never extends the privilege, or withdraws it for no reasonable reason, or charges for it. The argument that public passage across private rural land is solely a matter for the landowner's discretion has become a one-sided simplification. But some landowners will cling to these legalistic maxims. We are fooling ourselves if we deny that there will be some unhelpful and intransigent land-guards. In embracing an access master plan, the Government should make clear the extent to which it expects recreators and local-government officers to negotiate access improvements armed with little more than smiles and a conduct-slanted access code. In the absence of any new legislation, in many access situations there would be no legal requirement for the landowner to enter negotiations; the time to appreciate this is now, while drawing up the access strategy – not in ten years' time, after learning from experience.

The Report hints at a fairly wide consensus – if not a unanimity – against the Scandinavian access models: New Zealand is not ready to apply open-country access to uncultivated private land. I suspect that many walkers will accept this phlegmatically. The burning issue is not that walkers don't have area access to private uncultivated land; it is that in many places they do not even have linear access to it. Recreators are not asking for a feast; they are just asking for a bowl of soup. About 140 million Europeans now enjoy both the soup and the feast, in Norway, Sweden, Finland, former West Germany, and Britain. It is time that New Zealanders demanded the soup.

Many, though, will not. Throughout their lives they've been told that the soup is a privilege. This humble message is written deeply into numerous official publications, even the Report. It is etched into the New Zealand access mindset. Furthermore, if you've never tasted very fine soup – high-quality networks – you don't know what you're missing. I hope that the Government has the political courage to say that if we cannot obtain the soup by negotiation, then we will obtain it by legislation.

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Objectives

The Report suggests five objectives for a New Zealand access strategy.

- **Do you agree or disagree with these objectives?**

The objectives are fine. If I have any reservations, they concern not the objectives but the organisational particulars behind the access plan. What form will the strong leadership take? What form will the 'clarity and certainty' take? To what extent will negotiation and the outdoor access code be backed by legislative changes? Much of the rest of this response centres on these questions.

- **How could leadership for access be strengthened?**

For two reasons, I see a necessity for high-calibre people: firstly, because every one of them will need an overall grasp of the whole convoluted access debate; secondly, because the negotiating of solutions will require intelligence, maturity, and strength of character. So I picture articulate access officers with the high-level ministerial backing necessary both to liaise with local authorities and to influence LINZ, NZCA, DOC, and MAF.

At the heart of the access agency, if such an agency is set up, I see a bunch of folk who love to walk in the countryside. On their office wall I see an aerial photograph of the eastern half of the Otago Peninsula, whose skyline has no foot-tracks. I envisage a team knowledgeable collectively in planning law and planning procedure, agriculture, forestry, recreation, tourism, rural planning, land-surveying, and central and local government. These access enthusiasts will need to be persuasive – and sufficient in number to tackle the workload.

It is instructive to look back. In 1979 Mrs H Capper of the Wellington District Walkway Committee reported that 'there were insufficient personnel with the expertise to carry out the proposals of the District Committee. The Committee felt that more priority should be given [by the New Zealand Walkway[2] Commission] to the provision of such personnel for walkway development.'[3]

Britain, incidentally, has over three hundred public rights-of-way officers, professionals involved in the management of public rights of way, principally as local-government officers.[4] The bulk of the work for many of them, however, involves the management of existing footpaths and bridleways rather than the creation of new ones. I doubt whether a single one of them has ever had to create a new public footpath by 100 per cent negotiation, with an unyielding landowner, and zero per cent prescription. If that is what New Zealand will expect of its access officers, it had better choose people with supernatural powers.

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***Otago Daily Times*, 28 September 1977**

'Group Inspects City Walkways. Walkways in the Dunedin area were inspected by members of the New Zealand Walkways Commission from Wellington …

The chairman of the Otago Regional Walkway Committee, Mr John Gleave, said the meeting discussed the problems facing walkway committees, especially the lack of staff.'

'WORKSHOP REPORTS … MR B R SCHERER … 7. Staffing and Finance. More involvement by local authorities and voluntary organisations should be encouraged. More staff resources [should] be made available to the Commission.'

From *Proceedings of the New Zealand Walkways Seminar*, 1979.

The Report (page 75) suggests that the proposed access agency could be either an independent organisation or part of an existing government entity. I favour the idea of an independent body, with a budget that could not be absorbed into the general budget of some parent body. (Some quarters consider that, when the Walkways Commission was abolished, its funding vanished into nonspecific coffers of the Department of Conservation.) If the Government creates a stand-alone access agency, I wonder whether, at the outset, the Government should think about the procedure to be adopted should the highest echelons of the New Zealand Conservation Authority and the access agency disagree on a basic issue.

At the same time, dealing with access issues demands joined-up government. Although the Land Access Reference Group was set up by the Minister for Rural Affairs, its report has much relevance for the Minister for Land Information, the Minister for Sport and Recreation, and the Minister for Conservation.

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. So I think that an access agency would need very close links with LINZ, and possibly even work out of adjacent offices.

Also I would like to see the three or four main outdoor-recreation organisations appointing national access officers (or perhaps sharing one if funds were limited). As well as talking with landowners, these officers would keep their organisations' members accurately informed on access issues.

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I also agree with the sentiments on page 98 of the Report, which suggest that walking access to the countryside is a low priority in the national consciousness compared to some other objectives, such as conservation, health care, and urban-based sport. There was a revealing illustration of this on the weekend after the publication of the Report. The other access news – on the foreshore and seabed – grabbed all the headlines, or what was left of them after the Bledislow Cup. I looked through the *Sunday StarTimes* without finding a mention of the Group's report. Is the outdoor Kiwi becoming a myth? Would this be any wonder, with such a dearth of signposted track networks on the outskirts of many of our country towns?

Coherent track networks promote outdoor recreation and tourism. Our access leaders should be aiming not to respond to low or moderate demands but to substantially increase the amount of high-quality access, and hence to increase demand and usage, and hence contribute to the mental, physical, and economic vitality of the nation.

I don't know whether any economists have studied the dollar value of New Zealand's foot-tracks. If not, perhaps it is time that they did. A recent UK study has examined the economic and social value of walking in the English countryside, which has 188,000 kilometres of rights of way (excluding Scotland and Wales). One finding estimated that over 527 million walking trips are made annually to the English countryside. The expenditure associated with these trips is in the region of £6.14 billion. The income gen-

'At the same time, dealing with access issues demands joined-up government.'

'Unique recreation opportunities are available for New Zealanders because of our special outdoor environment. There are clear concerns that access, protection and sustainability have not been addressed in a coordinated manner that ensures these opportunities continue to prevail … '

From *Getting Set for an Active Nation*, Sport, Fitness and Leisure Ministerial Taskforce, 2001.

erated from this expenditure is estimated to be between £1.473 billion and £2.763 billion and supports between 180,559 and 245,560 full-time equivalent jobs.[5]

In September 2003 a Dunedin mountain-biker, John Fridd, carried out his own mini-survey of the economic regeneration taking place along the Otago Central Rail Trail:

> I was leaving Alexandra on a 140km Otago Central Rail Trail odyssey, keen to discover what sort of ride it was and why its popularity was exploding after only three seasons of being open along its full length. The Department of Conservation estimates 3000 to 3500 people tackled the whole 150km Clyde-Middlemarch trail last season, after it attracted about 2000 people in 2000–01. The number of shorter excursions on the trail last season is put at a staggering 80,000–100,000.
>
> I wanted to experience some of the smaller rural accommodation places established along the former railway to cater for trail users, and I was keen to find out how the communities along the route planned to cope if the number of visitors in the coming summer doubles last summer's, as some business people predict. I also wanted to hear whether the initially frosty relations between farmers and the new owners of the rail corridor, the Department of Conservation, had thawed now the trail was established.[6]

What John Fridd found was 140 kilometres of quiet optimism, community effort, individual enterprise, regrowth, increasing demand for beds, readiness for guests, and plans for bunkrooms.

'Westland – Mrs M Bryant The Westland District Committee had considerable support from the local community in the development, especially, of the Ross Walkway. This had included the shifting of an old miner's cottage close to the walkway path so that it could be developed as a visitor centre. The walkway had become a tourist attraction that provided economic benefit to the local community.'

From *Proceedings of the New Zealand Walkways Seminar*, 1979.

- **How can greater clarity and certainty about availability of access be provided?**

A Public Access Maps Series

Can I go through this gate? Who owns this farmtrack? Is it a public road? Do I or don't I need permission to cross that valley? Nobody knows. And it could be an expensive exercise obtaining the authoritative answer. So the Report (page 77) points out the need for readily available cadastral information. Public Access New Zealand (PANZ) too has produced detailed proposals covering cadastral maps.

PANZ has also proposed a *Public Access* topographic maps series, showing public roads and the boundaries of public lands.[7] I see this as the most effective long-term solution to the problem of providing clarity and certainty on access. Such a series could in time become an everyday part of New Zealand culture; my impression is that the present maps are definitely not. The existing maps, collectively a national information tool subsidised by the taxpayer, fail to provide many of the details that the recreational map-buyer expects.

Perhaps this shouldn't surprise us. Judging from a glance at the LINZ website, recreational map-users do not appear to have a voice at LINZ, although LINZ does have a number of formal advi-

'The existing maps, collectively a national information tool subsidised by the taxpayer, fail to provide many of the details that the recreational map-buyer expects.'

sory groups. It has a special group from whom it seeks 'advice on standards and programme priorities' for topographic information.[8] This group comprises Ambulance NZ, Antarctic NZ, Association of Crown Research Institutes, Civil Aviation Authority, Department of Conservation (DOC), Maritime Safety Authority, Ministry for Agriculture and Forestry, Ministry for Civil Defence and Emergency Management, Ministry for the Environment, NZ Fire Service, NZ Police, NZ Defence, State Services Commission – E-Government Unit, and Transfund New Zealand.[9] Arguably, none of these organisations represent outdoor recreators. (The Report has doubted DOC's commitment to that role.) Nor can I see in this list a body representing the tourist industry.

I should pause here to say that I know little about the mechanics of a rugby scrum, but this doesn't stop me talking about rugby. Likewise I know little about map production, but I still intend to say what I need from a map.

In 1949, Britain laid the foundations for showing access information on its two series of topographic maps (then 1:63,360 and 1:25,000). The task that faced the UK's local-government officers and map-makers was gigantic: some 200,000 kilometres of public footpaths and bridleways, legal records dating back many centuries, no digital technology. The map-makers went ahead, if slowly at first, aware of the importance of clarifying public rights of way. This type of information can contribute significantly to people's quality of life and to the cohesion and maturity of society.

No Such Thing as a Public Foot-track

New Zealand's present series of 1:50,000 topographic maps was not designed to show access rights. Furthermore, our access rights, with the exception of the boundaries of sizeable public lands, were not designed to be shown. Many public roads may need rendering as dashed; they go over cliffs or they meander across rivers – they are as much use to us as the canals on Mars.

Yet at least public roads do exist as legal things. In contrast, there is no such thing as a public foot-track. What seems to have developed is a multi-status system of foot-tracks that includes ungazetted walkways resting on a variety of formal and not-so-formal agreements. We cannot expect our map-makers to draw a public foot-track but then to add a note: 'Easement ends in 2015', or 'Easement ends if property changes hands', or 'Informal written agreement'. I suggest later, under 'New Zealand Walkways Act 1990', that research is needed to look at the entire developing web and to identify statuses that could be unified and regularised. Eventually, maybe years away, our 1:50,000 maps might be able to differentiate public foot-tracks from private foot-tracks. We could, for example, define public foot-tracks to include:

- all gazetted walkways (over 125, totalling about 1200 kilometres, according to a recent New Zealand Conservation Authority publication);[10]
- all other walkways that rest on agreements in perpetuity or whose legal agreements meet a designated degree of security;
- the 12,550 kilometres of track managed by DOC;[11]
- the new pedestrian accessways that the tenure review process is establishing across freeholded land; and
- the completed sections of Te Araroa – The Long Pathway (many parts of which will be in one or more of the above categories).

'What seems to have developed is a multi-status system of foot-tracks that includes ungazetted walkways resting on a variety of formal and not-so-formal agreements.'

(Note: there may be some double or triple counting in the above list. And I am merely floating a direction in which to head, not presenting a finished plan.)

Magenta Pecks

I said earlier that our present series of 1:50,000 topographic maps was not designed to show access rights. I don't know whether it could be adapted to do so. That's a question for the cartographers. A complete redesign could be necessary. I will not underestimate the difficulties that this would present to New Zealand's cartographers; but if ever there was a time for New Zealand to do something well, this is it.

I also mentioned British maps. From a design point of view, Britain's cartographers faced a relatively easy technical challenge: they merely had to design symbols to distinguish between public bridleways, public footpaths, and private footpaths. They chose long magenta dashes, magenta pecks (short dashes), and black pecks. (They also created symbols for two other forms of rights of way, but these rights of way occurred relatively rarely.)

You could be excused for thinking, at first glance, that New Zealand's cartographers would just face a similarly straightforward task: they would merely need to design symbols to depict public roads, multi-use (ie foot and cycle) tracks open to the public, foot-tracks open to the public, and private foot-tracks. But this would be more complicated than it sounds. Our Series 260 1:50,000 topographic maps use five symbols to depict three types of narrow road (sealed, metalled, and unmetalled), vehicle tracks, and foot-tracks. Each of these five categories might be either public or private. Public walkways might sometimes follow privately owned unmetalled narrow roads. Permitted foot-cycle tracks might sometimes follow private vehicle tracks. A *Public Access* map series would need to show all this information – and I haven't yet mentioned boundaries such as the perimeters of National Parks and public lands.

If an access strategy is endorsed and if it includes proposals on mapping, I presume that discussions will take place between the access agency and LINZ. Maybe the access agency could have a representative on the Officials' Committee on Geospatial Information (OCGI), the group that advises LINZ on topographic information. Our digital cartographers will need to play an inventive role in any access plan that we adopt.

Regarding basic change to topographic maps, I anticipate technical objections, cost objections, timescale objections, and even philosophical objections (what is a topographic map for?). I foresee these counter-arguments combining to prevent New Zealanders obtaining the type of maps that Britons have enjoyed for thirty years. The Government should not take 'no' for an answer. LINZ may be a commercially focused organisation, but it must also serve the taxpayer. Britain's Ordnance Survey has recently undergone operational changes to strengthen its commercial focus, but these changes have not stopped it employing a full-time rights-of-way coordinator whose whole working life is centred on the mapping of rights of way.[12]

' … if ever there was a time for New Zealand to do something well, this is it'

'WORKSHOP REPORTS … MR R A USSHER … maps with sufficient information to show access by right, access by permission.
'MR D V PFAHLERT … [The Walkway] Commission should request that walkways be shown on topographical plans.'

From *Proceedings of the New Zealand Walkways Seminar*, 1979.

Signage

The matter of signposting needs to be a part of any access plan. The Report mentions this need (page 78), but I would emphasise the necessity more strongly. In particular, for linear access across private land to be undisturbing, the route needs to be obvious, both on maps and on the ground.

Public Access New Zealand has suggested the creation of national norms: 'A unified national standard of waymarking and signposting would greatly enhance public understanding of access rights and responsibilities.'[13] Somewhere, there will be people who've spent their whole lives in signs. The access agency, if established, will need to locate these people and then review existing signage, if it is not to reinvent the wheel. There may be scope for some gradual unification without spending more money on signage than is spent at present.

Regarding the waymarking and signage of tracks, the origins of some of our present signage can no doubt be dated back to the greens and browns of the Department of Lands and Survey and the New Zealand Forest Service, with burnt-orange influences from the New Zealand Walkway Commission. At the New Zealand Walkways Seminar in 1979, delegates discussed 'the use of the Commission's burnt orange colouring on signs and pamphlets' and the need for the Commission to adopt standard signs.[14] Since then, the Department of Conservation has built up about fifteen years' experience of track classification, signage and waymarking. According to a recent New Zealand Conservation Authority booklet, 'those walkways which are part of the national system are identified by stylised "W" signs, often coloured orange and white.'[15]

' ... for linear access across private land to be undisturbing, the route needs to be obvious, both on maps and on the ground'

***Otago Daily Times*, 20 November 1973.**

'Contest To Design Walkway Symbol.
A competition to design a symbol for the New Zealand walkway was announced yesterday by the acting Minister of Lands, the Hon A. J. Faulkner. The walkway will be a network of walking tracks to give the public access to the countryside.

The first two will be opened on December 7 by Mr Faulkner and the Minister of Forests, the Hon C. J. Moyle. Mr Faulkner will open a walkway near Porirua and Mr Moyle one at Mount Auckland which will give good views of Kaipara harbour.

The competition will be in two sections, Mr Faulkner said.

Section A, sponsored by New Zealand Forest Products Ltd, will be restricted to pupils in secondary and intermediate schools at November 15. The winner will qualify for an award of $150 in book tokens to be shared between the winner and his or her school.

Section B will be open to all, with the winner receiving $200. This section is sponsored by the New Zealand Walkway Party which was appointed by the Government to investigate the establishment of a network of tracks.

Mr Faulkner said the idea of a symbol was to provide a simple but distinctive means of identifying the walkways.

'Multiple Agencies Involved. Tracks are provided by a wide variety of parties in Dunedin … For users of many tracks, it is very difficult to tell which agency or department has responsibility for the track as signage is poor, and there is little other indication about who owns the land.'

From *Dunedin City Council Track Policy and Strategy*, 1998.

KiwiWalks, a Hillary Commission programme, added another national variation, branding tracks that met certain criteria, such as being walkable in one hour. On KiwiWalks, the Dunedin City Council *Track Policy and Strategy* comments: ' ... the programme wants people to be able to identify a suitable track through its signage. However, the signage is not free. It will cost Council to purchase, install and maintain the KiwiWalk signs.'[16]

Most recently, the Te Araroa Trust has probably become a leading academy of signage, with 2,600 kilometres of track to keep it busy; I don't suppose the Trust will be wanting to change anything in a hurry.

Here and there, overlaid on this tartan of national signage, are small islands of local authority signage. Among the panoply of notices, you will spot many a PRIVATE PROPERTY, yet in the last ten years I have not seen a single example of PUBLIC ROAD. We are, it seems, proud of the former but indifferent to the latter. Our biggest signage problem concerns the signposting and waymarking of our public roads.

The decisions on signposting should not be rushed. After adequate consultation and research, the access strategy could include a substantial section on signposts. This could cover: a clarification of who, if anybody, is responsible for erecting and paying for signposting; the possibility or necessity of involving recreational groups, both in registering high-need locations and in erecting the signage; the pros and cons of national uniformity; and the pros and cons of different designs, taking into account the costs and estimated life.

I was about to add one more item to this list: proposals on the penalties for theft of and damage to signposts and waymarkers. But no. Unenforceable law is bad law. There's not much point in banging on about penalties for ripping up signs. Signage policies and plans should emphasise involving local clubs and local communities.

To summarise: I'd rather see no new signage at all than a kaleidoscope of new signs that nobody will maintain or that get ripped out by unconsulted locals. Talking about new signage, and leading to my next point, how about this one: WARNING! STATUS CHANGE! PRIVILEGE TO RIGHT.

'WORKSHOP REPORTS ... MR D V PFAHLERT ... colour blindness is related to the colour of track markers, and this needs to be investigated, particularly on routes; track markers can be overdone and the limit should be those sufficient for public safety; symbolic signs rather than lettered signs; standard signs to be adopted by the [Walkway] Commission.'

From *Proceedings of the New Zealand Walkways Seminar*, 1979.

Education: Rights and Privileges

Implicit in the access strategy's information objective is a sub-objective: education. Several writers on access have commented upon a lack of detailed public awareness. One submission to the Group referred to a 'universal ignorance' and the need for national education not only of the public but also of public servants.[17] Perhaps the information objective should contain an explicit reference to education.

Filling in the nitty-gritty of the National Access Syllabus, or of the TV adverts, might be more complicated than many people realise. First, there are the eight reservations of the Queen's Chain. Second, on access across private land, there is a basic confusion running through our access culture and through our access debate. This half-knowledge stems from the commonly recited advice: access across private rural land is a privilege, not a right.

Once upon a time the pubs closed at 6pm and Barry Crump trapped possums and many a good keen bloke asked permission for access across private rural land. This permission was invariably granted. Everyone understood that, legally, entry onto or across the private land was a privilege, not a right. This is the type of access I have referred to, earlier in this response, as arranged access.

The world is more complicated now, although some things haven't changed. All access to the countryside remains a privilege in the sense that we are all privileged to live on this Earth. Arranged, one-off access to private rural land remains a privilege in another sense: it is still a legal privilege, an exception, the result of a decision by the landowner to waive his or her right to exclude. Crumpie wouldn't find it quite so easy now, obtaining that permission, but he was a persuasive bastard and I suppose he'd still be talking his way past landowners if he was around today.

Other things have changed. We now have over 150 walkways, some gazetted, others less formally negotiated.[18] Many of these walkways cross private land. Of these, many were created by negotiating easements, with the approvals of the landowners. In plain English an easement, in this context, is a *right* of way. So the public have a legal *right* to use a walkway that is based upon an easement. If that easement is in perpetuity, the landowner has permanently waived his or her right to exclude (subject to the provisions of the Walkways Act and to any conditions written into the easement). The landowner's generous granting of access has certainly privileged the public. The result, though, is a right. The owner of property that is subject to an easement is said to be burdened with the easement, because he or she is not allowed to interfere with its use.

Despite these two very different legal situations regarding access across private land – of arranged access and of rights of way – we still have pervading our access culture, and carrying implied universality, the tenet: access across private rural land is a privilege, not a right. Is it any wonder that the public are confused?

As an aside, without getting too far off the subject, there *is* a group of people who do understand well the matters I have just discussed. This group comprises those landowners who, perhaps after taking legal advice, have declined to agree easements. There may be hundreds of them. Their misgivings echo down to us from twenty-eight years of walkway records. I will look at some of those records later.

• If a code(s) of conduct were to be developed, what could it cover?

There are problems with the term 'code of conduct'. I much favour the two-sided term 'access code'. Subject to that reservation, it depends on what the Group means by 'code'.

Many people interpret the word 'code' as meaning a brief list of rules. For example, the ten-point New Zealand Environmental Care Code has only forty words. An outdoor access code on these lines would list the most basic facts of considerate and acceptable conduct. The visitors need to know about dogs, guns, lamb-

'There are problems with the term "code of conduct". I much favour the two-sided term "access code".'

ing-time, fires, keeping to the track, minimising disturbance to livestock, gates (leave 'em exactly as yer find 'em), and car-parking (not inconveniencing the land-occupier). The landocrats need reminding that the maximum penalty for obstructing a public road is $10,000. (If it's not, it should be.)

Yet I doubt whether such a short code could put more than the tiniest dent into New Zealand's access problems. I think it would be impossible, for instance, to word any brief references to rights and privileges in a way that was acceptable to everyone. I myself would object to the inclusion, unqualified, of the sentence: 'Access across private land is a privilege, not a right.' Is an easement a right of way, or is it not?

A synoptic code could not cope with the intricacies of our multi-status walkways system or the uncertainties of our crumbling social conventions. At one extreme, the code would need to emphasise that access along Walkways-Act walkways across private land is a legal right, but one that might be subject to limitations and which carries responsibilities. At the other extreme, the code would need to explain that arranged one-off access across private land is a privilege, not a right. And what would it say about all the semiformal walkways and accessways whose exact statuses are known only to deed-holders and officers of the Department of Conservation?

It is one thing to state that all New Zealanders are eternally grateful to the hundreds of landowners who, for example, have entered into walkway agreements, all of which are voluntary; it is quite another thing to state, without legal exceptions and philosophical reservations, that linear access is a privilege, not a right.

A further complication is that many New Zealanders do not understand that public roads are public land, bisecting private land; to many of them, an unformed public road that crosses private land is 'access across private land'. The public are very capable of understanding this distinction; but we've never given them the information.

The many complications of access in New Zealand seem to me to indicate a need for an authoritative booklet on access, backing up any concise code that is developed. We should treat our public as a sophisticated population, very able to take in rights and responsibilities, liberties and constraints, powers and obligations.

The Report mentions the Scottish Outdoor Access Code as a possible model.

The Scottish Outdoor Access Code (Consultative Draft)

The first thing to stress about the Scottish Outdoor Access Code is that it is not merely a code of conduct, but a code of access. Furthermore, if for you the word 'code' conjures up something short and simple, then the Scottish access code is arguably a misnamed instrument, as it consists of a substantial set of principles, greatly detailing rights and responsibilities. (I am judging from the Consultative Draft.) These rights and responsibilities are akin in some ways to the Scandinavian models. Scots enjoy considerable linear and area access to private uncultivated land. I am pleased that the Group has drawn attention to the Scottish version. That version is based on a balance of rights and respon-

sibilities, 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. Without increased access across private land, New Zealand will not achieve a similar balance. There cannot be a balance of rights and responsibilities, in the context of private land, if you do not even have linear legal access across that land.

• Do you consider that a code(s) of conduct for access could be useful?

I see an outdoor access code as a cornerstone of the access strategy – and I may be the first person to ridicule the code if it is not accompanied by concrete plans to solve the access problems catalogued in the Report.

These are the questions that I hope I never have to ask: is there any point in educating people on how to behave on public roads if they cannot work out where the public roads are? Is there any integrity in promoting individual responsibility when there are gaps in governmental responsibility (eg no clear duty to confirm and waymark road alignments)? Why should I even *read* a government code, if State and local-authority uninterest denies me help in exercising my right of access to public roads? Is there any sense in advocating courtesy and understanding when the legal and moral rights have diverged and when the balance between these two forms of rights has tipped too far towards the landowner? Is there any purpose in promoting a respect for the law of trespass, when many recreators consider that that law needs softening? Regarding the Otago Peninsula, for example, I can see a situation developing where some Dunedin recreators could find an imbalanced access code a somewhat difficult thing to abide by and take seriously. Yesterday (18 September 2003) my weekly AOK mountain-biking newsletter arrived; it mentioned a recent access difficulty on the Peninsula, featuring a confrontation with a hammer-wielding land-guard.

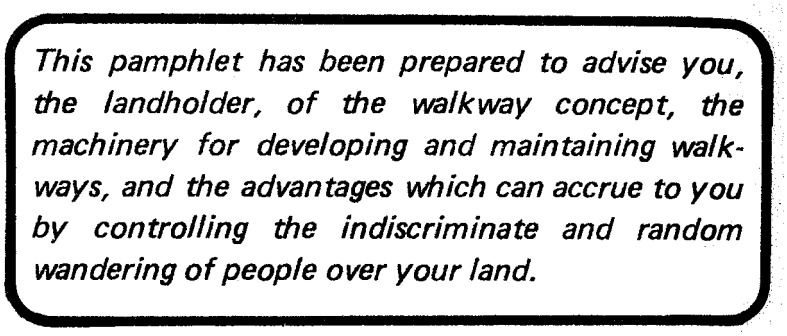
I am still struggling to understand the New Zealand approach to access to the countryside. First, we have an unwritten rule, called a social convention, that allows us access to private uncultivated countryside, provided that we ask for permission: a rule that many landowners now reject. Also we have a written rule, called a law, requiring a gate across a public road to carry a sign, PUBLIC ROAD: a rule that landowners universally ignore. So we have a big problem with landowners breaking the rules. How do we intend to fix it? – we invent a third sort of rule, called a code, aimed primarily at recreators.

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 is an unjustified degree of pessimism about the behaviour of the modern Kiwi townee. I have some difficulty accepting that urban New Zealanders 'often don't know how to act responsibly on farms'. (Your ministerial statement, 11 August 2003.[19]) It may be true of a minority. But the great majority should be

regarded as an educated population and not viewed – as some quarters seem to view them – as a potential pestilence. Even if there's some truth in the suggestion that urban New Zealanders have become removed from their rural roots, the situation will surely only worsen if they are not welcomed back to those roots.

There may be very justified grounds for concern about the reckless use of firearms and the inadequate control of dogs, as there are grounds for concern about the aggressive and threatening behaviour of a tiny minority of land-occupiers.



Selling the walkways idea to landowners, and reinforcing the stereotype of the stupid and irresponsible townee. In one sense, though, this message is correct: clear, unmistakeable linear access can be very unintrusive. From *New Zealand Walkways Act: A Guide to Landowners*, a pamphlet produced by the Department of Lands and Survey for the New Zealand Walkways Commission, 1980.

• How could the Queen's Chain be enhanced?

By reaffirming the principles behind it, by recognising it as part of New Zealand's cultural heritage, by mapping its present extent, by preventing any degradation of it, and by planning to fill its gaps.

• What role could negotiated solutions play in enhancing access?

See the following sections of Part 2:
'Public Roads' (pages 30-3).
'Mixed Fortunes in the Negotiating of Walkways' (pages 34–41).

The Dog Problem

Over the years, the problem of dogs worrying and killing livestock has influenced the attitudes of many farmers on access. Dog owners who do not or cannot control their dogs in the countryside are not just the despair of the sheep farmer; they are the enemy of every walker.

In September 2003, newspapers reported that stray dogs had killed about 300 sheep in the Wanaka area over the last year. One Cardrona Valley farmer, Jamie Robertson, had lost a hundred sheep.

Police had destroyed four dogs in the Wanaka area in recent months, but the attacks on sheep had continued. Bait traps, armed patrols, and public-awareness campaigns had failed to stop the killings, the most recent of which had occurred in the Cardrona Valley on 6–7 September, when twenty sheep were killed and another twenty injured.

On 9 September Wanaka police hosted a brainstorming with local farmers to consider solutions before the lambing season started.

In September 2001, Ruth Renner, of The Farm in Diggers Valley, wrote about a dog attack:

'The owners of the dogs on Saturday said … "Our dogs are safe with stock, they never chase our sheep." Our experience is that ANY dog, when left to its own devices, whether it is accustomed to sheep or not, will potentially chase them, and any dog has the potential to then grab a sheep … and kill it or maim it … Most of the sheep killed by dogs aren't then eaten, they are left and the next victim grabbed. That sort of scenario occurs on a regular basis all over the country on any day, it just doesn't generally make headline news. Often the dogs aren't caught and go on to repeat their activities and sometimes the dogs are caught in the act and the owners will swear that it can't have been their little poochy doing that sort of thing.

'I respect the right of anyone to own a dog and to enjoy the benefits of that companionship and I'm sure that any dog-owner visiting here will be a responsible one, but remember the heritage of your nice domesticated pet and remember its potential to return to a wilder nature.'

Dog Control Act 1996, Section 57.

(1) Any person who sees a dog attacking any person, stock, poultry, domestic animal, or protected wildlife or who is attacked by any such dog, may forthwith either seize or destroy the dog.

(5) The owner of any dog that makes any such attack commits an offence and is liable on summary conviction to a fine not exceeding $1,500 in addition to any liability the owner may incur for any damage caused by the attack; and, where the dog has not been destroyed, the Court shall, on convicting the owner, make an order for the destruction of the dog unless satisfied that the circumstances of the attack were exceptional and do not justify destruction of the dog.

The Scottish Outdoor Access Code (Consultative Draft)

The Scottish Access Code contains detailed advice on controlling dogs. It also includes a reminder that if a dog worries livestock on agricultural land, the person in charge of the dog is committing a criminal offence. Worrying includes a dog attacking or chasing livestock, or being loose in a field where there are sheep.

The Scottish Code, however, is designed for the Scottish situation, one of widespread statutory area access. Scots, for instance, can walk their dogs in woods, on grasslands, and along field margins, without asking for permission.

Options

- **Which aspects of the options in the Report (Chapter 10) do you favour or not favour, and why?**

Objective: To Strengthen Leadership

See earlier reply, under 'How could leadership for access be strengthened?' (page 11).

Objective: To Provide Certainty

The Report argues that the time and resources (especially public) put into negotiating access need to result in lasting access arrangements. I agree but I would like to see this objective – 'To Provide Certainty' – expanded to include an interpretation of high-quality access, as I suggested earlier.

Provision of Accurate Information on Location and Type of Access

See earlier reply, 'A Public Access Map Series' (page 13).

Signage

See earlier reply, 'Signage' (page 16).

Objective: To Embrace the Queen's Chain Ethos

It is a pity that Queen Victoria never visited New Zealand. Had she done, it might have occurred to her to say something about walking on attractive farmtracks that happen to be many miles away from any rivers, lakes, or coasts. I hope that the intense public focus on the Queen's Chain does not lead to a national tracks network on which it is hard to ever view water from a distance. There is a danger that much effort will be expended obtaining access to undistinguished coast and nondescript river-sides, while expanses of exquisite countryside remain private. I see the gradual development of coherent and logical networks of tracks that are not totally dominated by the locations of water margins, or by property boundaries and accidents of subdivision, or by the decisions of 19th-century land-surveyors.

Yes, embrace the Queen's Chain ethos. But also bear in mind that an enduring overemphasis on Queen Victoria's master-plan may have led to blinkered access thinking. In the access hierarchy of need, access along rivers or coasts seems to occupy a higher place in the public consciousness – and in the Resource Management Act – than access along ridge-lines. The Otago Peninsula is a prime example. Any legislative enhancement of the Queen's Chain could conceivably result in improved access to some sections of the Peninsula coast. Yet the blatant need, as I see it, is a track along the skyline.

'I hope that the intense public focus on the Queen's Chain does not lead to a national tracks network on which it is hard to ever view water from a distance.'

Objective: To Encourage Negotiated Solutions

Negotiations: Role of Roads and Role of Rights of Way

See the following two sections of Part 2:
'Public Roads' (pages 30-3).
'Mixed Fortunes in the Negotiating of Walkways' (pages 34–41).

Objective: To Improve Current Legislation

Conservation Act

The Report mentions competing tensions within the Conservation Act between achieving conservation outcomes and the provision of public access. I describe various consequences of this in 'Bicycles' (page 27). Frankly, you could write a book about these competing tensions. At what point do we say that a beach is overcrowded? Will any act of parliament ever put an end to that sort of question?

Recreational access to conservation lands remains a key priority for the Department of Conservation (DOC), as stressed in the first sentence of the committee report on DOC's 2002/03 estimates: 'Appropriations for Vote Conservation in 2002/03 totalled $267.537 million, with continued access to recreational opportunities *on public conservation land* targeted as a critical issue for the vote.'[20] (My italics.)

Later in the same report, the committee acknowledges DOC's central dilemma: 'The attempt to identify and manage a suitable balance between visitor access and conservation requirements lies at the heart of current policy efforts and appropriations.'[21] The report goes on to say that DOC will 'attempt to respond to anticipated higher numbers of visitors, both from overseas and from within New Zealand'. Maybe the use of the word 'attempt' is revealing. DOC already looks after '1000 huts, 12,550 kilometres of track, and 14,400 visitor structures'.[22]

DOC sounds to me like a very busy organisation, perhaps already overstretched, and unlikely to devote time or money to access matters unconnected with conservation land. DOC is, therefore, already isolated from two of the main access challenges that we face: the rediscovery and harnessing of our existing public roads and the expansion of the private-land parts of the national walkways network .

Trespass Act

The Report (page 88–9) describes submitters' proposals on amending the Trespass Act. Some submitters have proposed legislating so that entry onto private land for noncommercial customary or recreational purposes would not be an offence under the Trespass Act. Recreators will welcome this fairly strong proposal. As the Report points out, however, the change would erode the landowner's right to exclude. Ie, it would affect his or her property rights. The proposal does seem to contradict statements elsewhere in the Report that no general as-of-right access was envisaged (eg page 67).

Part of the proposal just described argues 'that a reasonable request for access should not be turned down on an unreasonable basis'. There's some bizarre logic at work here and there is scope for a conference on the meaning of 'reasonable'. On the one

hand, this proposal accepts the continued primacy of the need to obtain permission; on the other hand, it says that permission *must* be granted. This is a circular argument that goes nowhere; it is another form of the core question about property rights and societal expectations.

A P Herbert, the English writer and politician, wrote that 'the Common Law of England has been laboriously built about a mythical figure – the figure of "The Reasonable Man" '.[23] The law of trespass already relies heavily, in practice, on the ability of a jury to picture a reasonable person. But asking a jury to decide what is a reasonable request for access would be inviting it to range over the whole access debate, including property rights, *allemansrätten*, and customary rights.

Compelling arguments for amending the Trespass Act, without creating as-of-right access, may exist. Many walkers probably view the perceived severity of the present law as a sheer anachronism. The trespass issues demand a deeper look than what they receive in this Report. If the Minister's researchers dig deeply enough into the filing cabinets, they might find that the arguments have already been well aired. Recreators and landowners discussed the law of trespass at the New Zealand Walkways Conference in 1989:

> Landowners' Views
> C Horne spoke about tough Trespass Laws and asked Mr Marshall [National Party spokesperson for Conservation] if he was interested in re-vamping the Act so that the provisions were not so tough.
>
> Mr Marshall said that was something that had to be worked out, as there was an element which made these laws very necessary.[24]

It is not clear from the conference report whether any delegates asked Mr Marshall the obvious question: who *are* they, this element? Our farmers deserve all the help the law can give them against sheep-rustlers and equipment thieves, dope-growers and pure idiots. Yet an argument for severe trespass laws is an argument for extreme protection for the landowner. Such an argument supports only one side of the debate over property rights and freedom of movement. Ralph Emerson, the US poet and essayist, provided the other viewpoint: 'Good men must not obey the laws too well.'[25]

' ... asking a jury to decide what is a reasonable request for access would be inviting it to range over the whole access debate, including property rights, *allemansrätten*, and customary rights.'

New Zealand Walkways Act 1990

In Part 2 I will look at various aspects of walkways and I will suggest areas of concern and directions of change.

Health and Safety in Employment Act

Over the last twenty years or so, many concerned outdoor people have written much on how risk management, invented for shipyards and meat factories, has infiltrated every aspect of human life. At some point a country reaches a stage where risk aversion is seriously damaging the health of society, where young people are no longer reaching their full potential, and where old guys cycling along rural roads are forced to wear helmets. New Zealand might be as close to that stage as any other country.

When I finished working as a professional outdoor instructor, I thought, Great! Now I can do my own thing, without worrying about form-filling and my expired first-aid certificate. But no. After a lifetime being responsible for others' safety, I am not now responsible for my own: some farmer is going to look after me. But the farmers don't like this idea, and their uncertainties about the Health and Safety in Employment Act might limit my access to farmland.

This situation seems to be more a result of misinformation and overreaction than of informed decision-making. Yet as long as the landowners remain unsure and in two minds, we have a problem.

The uncertainty that existed before the Health and Safety in Employment Amendment Act 1998 is well illustrated by the following example, taken from a 1996 guidebook: 'This track is on farmed, leasehold land and is open to the public by courtesy of the leaseholder, on the condition that people visit at their own risk.' (*AA New Zealand Leisure Walks: Otago*, 'Diamond Lake – Rocky Mountain'.) Since that was written, the law has changed. According to the Report (page 18), the 1998 amendment makes it clear that farmers do not have a duty to recreational visitors unless they give express consent to those persons to be on the land. But will this amendment have removed that particular leaseholder's uncertainty?

'Express' just means explicitly stated. Here, the host makes known that all walkers are welcome, without asking for permission. Some legal minds could argue that this generous policy amounts to giving express permission to all, in which case the host would still have a duty to warn the visitors of all 'out of the ordinary' or 'abnormal' dangers.

As long as such uncertainties remain, some land-occupiers will find it easier to just say no, and much recreational potential will remain unrealised.

Practical policing of the HSEA is carried out by the Occupational Safety and Health Service (OSH), a service unit of the Department of Labour. Parliament designed OSH to look after workplace health and safety. OSH is a dog that can be cuddly but which is basically a hunting animal and which, shown the scent, acts on instinct. It will not be frightened away by grey areas of the law; it will want to test those grey areas. There are situations for which is should be muzzled.

Additional Matters

Bicycles

The Group's terms of reference specifically excluded any consideration of the needs of mountain-bikers. As a result of this, their needs receive just a paragraph (the Report, page 93), which includes the statement: 'Bicycle access could be considered alongside pedestrian access.'

In a report commendable for its clear and accurate English, the word 'could' stands out here as a rare blunder. An access master plan that does not contain a definite thread of cycling will fail a sizeable recreational group. Such a strategy would be dated from the start, because for some years planners have been attaching importance to multi-use tracks. Cyclists' needs were recognised in 1989 at the New Zealand Walkways Conference: 'Additional policies that appear desirable in future are: ... greater experimentation, eg wander at will, pony ways, cycle ways.'[26]

Six years later, in 1995, the Minister of Conservation approved the New Zealand Walkways Policy. Section 8.3 covers nonpedestrian use. It allows for cycling provided that certain conditions are met, such as 'not unduly interfering with walkers' and 'not causing unacceptable damage to the track'.[27] The wording does not actively encourage provision for cycling, and one now wonders whether this accords with more-recent Government policy statements on cycling. Nevertheless, the wording provides a loophole for cycling.

An increasing number of track authorities appear to be taking advantage of that loophole to designate walkways as suitable for bicycles. The Upper Hutt City website, for example, states that 'Upper Hutt boasts a fine selection of walkways, many of which also allow mountain bikers.'[28] Dunedin City Council's *Track Policy and Strategy* says that 'priority will be given to multi-use tracks, such as those which allow for a range of users including mountain bikes and walkers'.[29] Even Dunedin's Woodhaugh Gardens, a shrine of pedestrianism, now has its wycleway running diagonally across its centre.

Attitudes to cycling, however, differ sharply from place to place. This is definitely true of different landowners and may be true of different Department of Conservation (DOC) regional staff members. In some parts of the country, mountain-bikers and DOC staff enjoy excellent relations, resulting from or resulting in liberal cycling access to land managed by DOC. In contrast, there is anecdotal evidence that in some places mountain-bikers view DOC as the enemy. There is no need for this ill feeling, as the DOC guidelines governing the use of bicycles provide plenty of scope for mountain-biking on land outside national parks.[30] As with all environmental guidelines, though, interpretations of the *Guidelines for Use of Bicycles* can vary widely. It is possible that DOC regional staff members are applying DOC's cycling guidelines differently and inconsistently. An access agency could greatly help cyclists negotiate with DOC regional officers.

'It is possible that DOC regional staff members are applying DOC's cycling guidelines differently and inconsistently.'

An access agency could also assist in strengthening the links between mountain-biking's national representatives and the Department of Conservation's policy-makers. In 2001 the Graham Report, *Getting Set for an Active Nation*, commented that 'there has not been a sufficient level of coordination between the Department of Conservation and central recreation groups.'[31]

Relative Importance

This is a little story about priorities. I was most unlucky, at first, trying to obtain a copy of *Guidelines for Use of Bicycles on Tracks Managed by the Department*. On 7 May 2003 I looked for this document on the DOC website but didn't find it. Neither could I locate it in eight New Zealand library catalogues. So I emailed the Wellington Conservation Information Centre. They didn't reply. On 12 June I wrote to the DOC head office in Wellington. I then waited a month. The document finally arrived in an email on 9 July, nine weeks after I had first asked for it. The email covering note included the remark: 'It appears that you do have access to this document (attached).'

I interpreted this note as meaning that there had been some doubt whether a member of the public was allowed to see DOC's national guidelines on the use of bicycles. Human error, I guess. An internal misunderstanding. Nothing sinister. But what does this suggest about DOC, recreational access, public consultation, and transparency?

On 9 October 2003, another trawl through the DOC website failed to find the bike guidelines. I can only assume that it has not occurred to anyone in DOC that this policy document, of relevance to every mountain-biker in New Zealand, is important enough to be made easily available to the public.

What sort of things, incidentally, *are* important? You should have no trouble finding and efficiently downloading 102 pages of the *Department of Conservation Strategic Plan for Managing Invasive Weeds*, and perhaps we all should, because then we will be able to help keep the Queen's Chain free of alligator weed (*Alternanthera philoxeroides*) and water poppy (*Hydrocharis nymphoides*) – so long as we don't want to get there on our bicycles.

As I said earlier, though, attitudes to bicycles are changing. From abroad, one indication of a greater acceptance of mountain-biking is that Britain's 1:25,000 topographic maps are now showing off-road cycle routes (using orange dots).[32]

Scottish Outdoor Access Code (A Consultative Draft)

Where and when you can exercise access rights

2.2 You can exercise your access rights over almost all land and inland water in Scotland, including hills, mountains and moorland; woods and forests; rivers, lochs, canals and reservoirs; riverbanks, loch shores, and the coast; round the margins of fields where crops are growing … [The list is extensive].

What you can do under access rights

2.7 You can exercise access rights for recreational or educational purposes, or for crossing over land.

2.8 The legislation does not define "recreational purposes". The Code uses the term open-air recreation and this means any lawful recreational activity that depends on the natural or cultural qualities of the outdoors for its enjoyment. Open-air recreation includes:

- pastimes, such as watching wildlife, sightseeing, painting, photography and enjoying historic sites;
- family and social activities, such as short walks, picnics, playing on a beach, sledging or paddling; and
- active pursuits, such as walking, **cycling**, horse riding, rock climbing, hill-walking, running, orienteering, ski touring, ski mountaineering, caving, canoeing, swimming, rowing, windsurfing, sailing, diving and air sports.

Part 2:
Linear Access to the New Zealand Countryside

Kauri forest, Auckland, by N M Adams, from *Trees and Shrubs of New Zealand*, published by R E Owen, Government Printer, Wellington, 1963.

Public Roads

The Report briefly discusses roads and their role in negotiations (page 84). One submission to the group argued that the existing public roads offer 'a vast untapped resource of "green roads" ... that could be utilised for greatly improved public recreational access'.[33] Also the Report points out that new roads can be created of a suitable width for pedestrian and cycle use only, as opposed to being wide enough for vehicles. The Report also mentions another option, rights of way (page 86). Rights of way such as gazetted walkways may, if secure, create crucial access routes where no public roads exist. These two mechanisms are very different legally, yet in practical terms, from the walker's perspective, the results may be similar. My feeling is that both mechanisms demand a place, but I have reservations about each. This section covers the pros and cons of public roads.

The Otago Peninsula and Common-law Rights of Passage

Legal roads, formed and unformed, may offer the most practical and secure solution for creating foot-tracks across private rural land, in many circumstances. An extensive web exists, the roads are public land, and they provide centuries-old rights of unhindered passage. Approximately half of New Zealand's public roads remain unformed or only partly formed, being therefore highly suitable for walkers.[34] Why bother with walkways at all?

In 1992–3 David Allen asked this question in relation to the Otago Peninsula. His thesis, 'Paper Roads and Walkways on the Otago Peninsula', analyses the situation from the viewpoint of a professional land-surveyor. I shall draw on it heavily. Allen ventured onto the slopes and pastures of the Peninsula, with his camera and a cadastral map, partway through a highly publicised dispute over the opening-up of unformed roads. In 1990 a group called the Otago Peninsula Walkers had cleared and signposted some tracks that followed public roads. The group had not obtained the permission of the City Council for this work, a necessary step, and some landocrats had opposed the development:

> There is a land war being waged in Otago. The Peninsula is in turmoil. A growing tourist destination with the popular royal albatross colony and Yellow-Eyed penguins, it is also a well known haunt for trampers and ramblers. However pressure of numbers and encroachment on farmland has raised the ire of property owners, and at the same time uncovered an unresolved issue about the public's right of access to paper roads ... This country has an invaluable system of formed and unformed legal roads that provide public access to places which would otherwise be difficult to get to. Outdoor recreation is of major importance to a large part of the populace and people expect to have access to the countryside and coastlines. Recent undertakings to close unformed paper roads on the Otago Peninsula and replace them with negotiated accessways have met with a storm of protest. Many of these

> unformed roads were created in the mid-1800s, their only purpose [being] to provide legal frontage to parcels of land. Most have never been, or are ever likely to be formed due to the steep terrain, and their physical alignment on the ground is often indistinguishable from the surrounding land. Certain groups see these roads as providing recreational walking opportunities on the Peninsula whereas landowners view such activities as trespass across private property.[35]

The 'recent undertakings' Allen referred to were the proposals in the Dunedin City Council's draft accessways plan of about 1991.[36] The City Council's suggestions aimed to improve and regularise the access for walkers. Many responders to this draft supported the establishment of the walking tracks but strongly opposed the accompanying closure – ie, the stopping – of the roads.[37] In particular the Otago Peninsula Walkers argued for the retention of the roads and the upholding of the common-law rights of passage, rights bestowed under the law of highways. In contrast, Federated Farmers of New Zealand, representing many of the landowners, supported the road-closure proposals, which if implemented would have resulted in the road-land being sold to adjoining owners.

You might conclude that local authorities that want to avoid uprisings should be wary of bargaining with public roads. In particular, the swapping of public roads for Walkways-Act walkways may not be viewed as a fair exchange, except by the landowner who acquires a 20-metre-wide strip of real estate. There's something sacrosanct about public roads, even if you cannot find them; meddling with them can be meddling with freedom of movement and civil liberties.

'Case law has determined that such action [the closing of an unformed road to relocate it] can occur only if public access is improved, maintained or provided by the territorial authority elsewhere.'

From the Report, page 85.

The Legality of Roads, and Road Definition

The access situation on the Otago Peninsula has quietened somewhat since Allen's study, but his analysis remains relevant to the current national access debate. Part 1 of his second chapter deals with establishing the legality of roads. The process is abstruse enough to drive a layperson to road-therapy: inspect the relevant Crown Grants, Certificates of Title, Cadastral Record Maps, and Warrants from the Governor-General; ascertain whether the Local Body regards the road as public by user, or has spent public money on it; or ascertain whether there has been an implied dedication by the placement of occupation along the road boundaries allowing a strip to be used by the public.

In some cases, implied dedication 'by public user' decides the outcome. If the physical position of the road is not evident, it can sometimes be difficult to establish long-term usage as proof of legality.

Part 2 of the same chapter deals with the difficulties of road definition, the process of actually locating the road on the ground:

> The general public have rights of pass and repass on legal roads but it is difficult to exercise this right if the intended user cannot visibly identify the road in question. Uncertainty as to the true position of some paper roads on the Peninsula has in some cases led to confrontations and heated exchanges between rival groups. In a number of cases certain parties

> have insisted on exercising their rights without clear evidence of the correct alignment. Therefore the true position of the road becomes a key issue ... Assuming the legality of the particular road in question has been established, ascertaining clearly and concisely its location on the ground requires the skills of a trained land surveyor proficient in cadastral definition. Consequently the expertise of the current Chief Surveyor (C.S.) for the Otago Land District, Mr Mark Smith, was sought.[38]

Allen explains that the definition of any road will depend on the quality of the underlying surveys. When these surveys are unreliable, as most of them were for the paper roads on the Otago Peninsula, the surveyor must resort to a hierarchy of other evidence: old survey pegs; occupation (fences, hedges, etc); documentation (plans, titles, old deeds, Cadastral Record Maps, original surveyors' field-books); and the opinions of long-established residents. Allen comments that where the paper-road definition is difficult, the cost of re-establishment is often prohibitively expensive.

It is hard to read all this without thinking, What chance Joe Public, even with hand-held global positioning? What hope is there for recreators, without a joint initiative from the local authorities and the Government? Furthermore, what hope is there for this joint initiative, without firm leadership from the Government? According to the Report (page 22), territorial authorities are reluctant to enter into disputes because of the cost to ratepayers of surveying the roads. Nor is this reluctance confined to local bodies; the Report (page 64) says that local *and central government agencies* were mostly unwilling to assist the public to exercise their rights on unformed roads.

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The End of the Otago Peninsula Land War

Having examined the legal and practical difficulties of bringing the paper roads of the Peninsula into use, Allen then summarises the history and principles of walkways and he also compares the legislation affecting roads and walkways. He then covers the Dunedin City Council walkway-system proposals of 1990–1 and the different public viewpoints. Finally he recommends – the thesis is dated 1993 – that Dunedin City Council implement its overall recreational plan for walking opportunities on the Peninsula. One of his conclusions is that 'the provisions of the Walkways Act offer an alternative solution to the problems caused by paper roads'.[39]

Events seem to have overtaken Allen's thesis-writing. The proposal to establish walkways under the Walkways Act was never enacted. The accompanying proposal to stop the legal roads – the emotive issue behind the Peninsula land war of the early 1990s – was never enacted. No Walkways-Act walkways were established. No legal roads were stopped. Instead, walking tracks (the word 'accessways' might describe them better) were created on the legal roads. Dunedin City Council, working with the Otago Peninsula Track Working Party, signposted these tracks in 1992, thus acknowledging and protecting people's common-law rights of passage.[40] The Otago Peninsula Walkers had won the land war decisively.

'Obstruction of public roads is the largest access problem in New Zealand. PANZ deals with such cases on a daily basis, when called upon to provide advice to aggrieved members of the public. The biggest obstacle to resolution is invariably official reluctance to bat for the public interest.'

From *Improving Public Access to the Outdoors*, Public Access New Zealand, June 2003.

Or had they? How much land did they gain? None. What sort of a track network evolved? A second-class one, in my opinion.

The Dunedin City Council leaflet, *Otago Peninsula Tracks*, lists nineteen tracks, which sounds an ample number to produce an uninterrupted web.[41] But these accessways tend to be isolated fragments. In some places these fragments are joinable into continuous sections by using gravel roads, yet these combinations provide only an indirect and inefficient route down the Peninsula. None of the nineteen tracks follow the ridge-line of the Peninsula. There is arguably no continuous and efficient coastal foot-track.

What we have on the Peninsula is a patchy sprinkling of accessways that illustrates everything that can be wrong about track networks based on public roads. I am not the first person to say this. The Department of Conservation was involved in the initial planning stages in the early 1990s:

> It was felt [by the Department of Conservation] that the design of any walkways network based on existing paper roads would not achieve the desire of the public for access to areas of significant interest of [*sic*] natural beauty. [The Department's] preference was to see walking opportunities established to the '*highlights*' of the Peninsula rather than via a series of random paper roads.[42]

At the start of this response, I suggested some constituents of high-quality access. I did not include the physical attributes of tracks, so let's do that now, in a general sense. High-quality foot-tracks provide rational routes from A to B and evolve – or are designed – to be in sympathy with the landforms. What the Peninsula needed was a coherent network of tracks, designed to high aesthetic standards, fit for countryside of national importance. Random accessways, though, is what we ended up with. The Peninsula's track network has stabilised as a fragmented pattern, frozen in time, a time that you could argue dates from the mid-1800s, or even from maps drawn in Scotland. I do not know how much arranged access there is for walking; there appears to be little if any for mountain-biking. The warfare of the early 1990s has subsided to the level of occasional skirmishes involving mountain-bikers. The Peninsula is heading nowhere except the university textbooks, as the classic planning dilemma: one person's preservation is another's stagnation. Or, how not to promote outdoor recreation and tourism.

In the recent access history of the Otago Peninsula, there are lessons for the whole country. I hope that New Zealand does forge ahead to open many unformed public roads for pedestrians. But each should be considered on it merits. Some early public roads have little connection with the shape of the land or with journeying from A to B. They were marked on maps merely to comply with the law in connection with the granting of sections. Having delineated a road on the map, the Crown was then able to sell the land fronting the road. Now, a hundred and fifty years later, some recreation groups or local communities might seek to relocate some of these roads. The Report (page 84–5) mentions this possibility. I would like to see the access plan, if adopted, detail exactly how negotiation might achieve this, bearing in mind that local authorities have for the most part shown a reluctance to signpost and waymark even uncomplicated, usefully sited roads.

'… some recreation groups or local communities might seek to relocate some of these roads … I would like to see the access plan, if adopted, detail exactly how negotiation might achieve this, bearing in mind that local authorities have for the most part showed a reluctance to signpost and waymark even uncomplicated, usefully situated roads.'

Walkways

The Report's comments on walkways (pages 16 and 90) partly match my own feelings, and other views I have read, about walkways, but I think that a far more detailed look at walkways – and at foot-tracks in general – is required to enable people to form fact-based opinions on the issues. Reading the Report leaves me with many questions on walkways but few answers. Why, for instance, are many walkways never gazetted? Landowners who sign informal walkway agreements may not receive the full protection of the Walkways Act. Do these things matter? Are the survey costs for new walkways higher than those for other forms of access? For a country the size of New Zealand, does the total of 'over 150 walkways' represent a generous provision or is it a small fraction of what's required? How secure are easements? How many of the easements are for a fixed term? Has the Age of Volunteers passed?

Several of these questions have been around in one form or another since the New Zealand Walkways Act 1975.

Mixed Fortunes in the Negotiating of Walkways

A determined negotiation phase is both a civil way of doing things and a political necessity. We have to try thrashing things out.

The indications from past examples are contradictory. The walkways idea evolved in the late 1960s, after a Federated Mountain Clubs proposal for a 1,200-mile national trail. (See page 47.) The emphasis shifted from the need for one long-distance track to the need for a national network of tracks. If the following newspaper story is anything to judge by, the early walkway enthusiasts faced some strong, even scathing, resistance:

***Otago Daily Times*, 16 December 1971.**

'Walkway Scheme Opposed.

A network of walkways throughout New Zealand, which would give the public access to private property as well as national parks and reserves is "not on" as far as farmers in the Auckland province are concerned.

At a meeting of the provincial executive of Auckland Federated Farmers yesterday, members were reported to be strongly opposed to the scheme, which had been proposed in October, by the Minister of Lands, the Hon D. MacIntyre.

Members of Federated Farmers in the Auckland province had received circulars about the possibility of establishing the network, and many had replied through their executive members opposing the proposal.

Concern was expressed by farmers at the possibility of the public bringing firearms and dogs on to their properties.

The chairman, Mr W. R. Martin, who is Auckland provincial president, described the proposal as a frivolous move by the Government. There were far more important issues at hand to be dealt with.'

This narrow-minded antagonism did not come from nouveau-riche fugitives from the city, nor from wealthy foreign land-buyers, but from farmers steeped in the New Zealand access traditions. Reactionary hostility from farmers, though, was not the full story. Many farmers supported the walkways scheme. The first two walkways were opened on 7 December 1973, anticipating the New Zealand Walkways Act of 1975. The twelve District Walkway Committees formed after the Act contained a heavy representation of farmers, who appear, from the records, to have served with a variety of eagerness and commitment.

The records of the New Zealand Walkways Seminar of 1979 refer quite frequently to negotiating. At this seminar, delegates from each of the twelve District Walkway Committees presented district reports.[43] The references to negotiating reflect mixed fortunes. I have extracted the following quotations from within numbered lists and I reproduce them here in the order they occur:

Canterbury – Mr B K Sly
A problem has also occurred with landowners in the Canterbury district particularly on Banks Peninsula in that landowners were quite happy to accept the unofficial use of their land by the public for walking but were unhappy when it came to the preparation and execution of a legal agreement which was binding over the title of the land. As a result, although the Port Hills have been a traditional playground for the public of the Christchurch area there has unfortunately been little progress in securing land in this area for walkways. However, it has been found that ... making initial contact with landowners at an early stage of development has increased the chances of permission for the walkway being more forthcoming. [The subsequent development of the Port Hills walkways could be viewed as a success.]

Gisborne – Mr A Webster
The Committee has experienced landowner problems particularly at Kaiki Beach. These problems have been overcome by a personal approach from the walkway administration. In the case of Otoko, a former railway line, landowners had been brought together for a one-day discussion.

Marlborough – Mr D Dean
The landowners in this district had been very co-operative with walkway development, because people were already crossing their properties regardless of whether or not they were walkways.
The Committee had experienced a problem of obtaining qualified and experienced personnel. This was in two fields: one, the supervision of work staff, both special employment and voluntary, and two, in negotiating with landowners. The Committee considered that negotiations must be carried out by a senior officer of the Department of Lands and Survey.

Nelson – Dr F E Gallas
Negotiations with landowners had been no problem in this district.

***Otago Daily Times*, 8 December 1973**

'Minister Opens Walking Trail.
The first northern section of what will eventually become a continuous nation-wide network of walking trails was opened yesterday by the Minister of Forests, the Hon C. J. Moyle.

More than 300 school children and members of the Federated Mountain Clubs attended the opening of the Mount Auckland walkway, 55 miles north of Auckland, and set off afterwards to tramp the five-mile route.'

'Chris Horne commented that everyone should be wary of companies who have unhealthy products to sell becoming sponsors of the Walkways System.'

From *The Future of Walkways: Proceedings of the First New Zealand Walkways Conference*, held in 1989.

North Auckland – Mr A W Conway
Problems with landowners in the district had been minimal because of prior planning and a personal approach to landowners prior to the walkway development. However, some problems had been experienced due to the changes in ownership of land.

Otago – Mr J R Gleave
Farmers in the district were happy to give informal rights for the public to pass over their properties but they had not been happy to have these rights formalised, as in the case of the Dunedin Peninsula Trust.

Wellington – Mrs H Capper
The Committee considered there was a need to provide a brochure setting out the rights of landowners regarding walkways, and the protection that landowners are afforded in terms of the Walkways Act.

Westland – Mrs M Bryant
Landowners in the Westland district had been very co-operative with walkway development.

The district reports were followed by a discussion, a summary of which appears in the seminar records. I have reproduced part of that summary on page 37.

RESUMÉ: MR N D R McKERCHAR, ASSISTANT DIRECTOR (NATIONAL PARKS AND RESERVES) … It came out in a number of reports that many landowners are happy to accept an informal arrangement to allow walkers on their land, but are reluctant to have easements registered against their title … It is interesting that some districts are having more trouble than others with landowners. I gained the impression that those that are enjoying success are displaying a little more energy and are a little more positive in their approach to landowners.'

From *Proceedings of the New Zealand Walkways Seminar*, 1979.

11. Can you be appointed an honorary ranger for a walkway?

Yes. Suitable persons can be appointed honorary rangers and issued with a warrant to enable them to enforce the conditions for the use of a particular walkway. Consideration will be given to appointing owners or occupiers as honorary rangers of land through which walkways pass, if they so desire.

Selling the walkways idea to landowners and land-occupiers, and preparing them for the worst.

From *New Zealand Walkways Act: A Guide to Landowners*, a pamphlet produced by the Department of Lands and Survey for the New Zealand Walkways Commission, 1980.

‘Discussion on District Walkway Reports’ from the *Proceedings of the New Zealand Walkways Seminar, Lincoln College, Canterbury, 10–12 May 1979.*

Nine of the twelve District Walkway Committee reports mentioned negotiating with landowners. I have extracted the following from the notes on the discussion that took place after the reports.

Regarding the obtaining of landowners’ approval to walkways across their properties, Mr Edmonds (Lands and Survey, Planner) advised that it was apparent that there had been mixed success in obtaining this approval. He asked whether it was the technique used, or the people concerned.

Mr Conway (North Auckland) advised that the liaison in his area had been good. The procedure which had been adopted was:
(1) Planning of the proposed walkway.
(2) Reserves Ranger to look at the feasibility of the walkway.
(3) The Committee then considered the proposal, and if private land was involved, the Chairman and a Committee member went personally to see the owner.
At this stage it had been early enough to re-route the walkway if difficulties arose.

Mr Gleave (Otago) advised that because Committee meetings were open to members of the news media, information regarding walkway proposals may be obtained by landowners prior to their being visited by the Committee. He considered that there may be a need to exclude the Press from meetings where names would be involved. Further, he added that a leaflet setting out a landowner’s rights, etc, was needed. His Committee had drawn up this information.

Dr Heather (Commission) asked whether informal access could be sought. This would mean the sign posting, etc, of a walkway, but there would be no legal protection for the landowner.

Mr Phillips (Commission) commented that farmers were individualists. Many had had bad experiences with the public previously, and it was therefore important to involve farmers in the walkway proposal before it was notified to the Press. He added that farmers could benefit from walkways in that there would be controlled use of the public using the land. He commented that there was a danger in opening a walkway prior to gazettal because the provisions of the Act, especially with regard to compensation, were not applicable.

In answer to Mr Mitchell’s question regarding how many offences [by members of the public] had occurred so far, Mr Hunt (Commission) replied that there had been none. Mr Mitchell added that he did not see a need to wait until gazettal. He felt farmers saw the signs and general authority as being sufficient. Mr Scherer (South Auckland) did not agree with this. Mr Bleach (Otago) added that farmers guarded the rights over their land, and that antagonism could arise because of their fear of loss of these rights. There was a need to properly explain the easement situation. Mr Hunt considered that problems could arise with farmers discussing easements with solicitors. Mr Watson (Taranaki) asked whether the Commission would allow money to be spent on a path if approval to an easement could not be obtained. Mr McKerchar (Lands and Survey) advised that this was a fundamental problem – just how much money should be spent. He advised that each case had to be considered on its merits, and that no complaints of wilful damage had been received so far. He felt that farmers’ fears may be allayed with time.

‘Keynote Address’ from the *Proceedings of the New Zealand Walkways Seminar, Lincoln College, Canterbury, 10–12 May 1979.*

This address was delivered by John T Kneebone, a member of the Land Settlement Board and a past president of Federated Farmers of New Zealand. The Walkways Commission had been established for three years. It had opened sixteen walkways. Kneebone’s constructive approach to access is warm-hearted and generous, albeit with a little homespun philosophy.

I am pleased at the way the farming community in general has accepted the concept of walkways. At a regional level, well known and respected people have become involved and have allayed farmers fears that they were about to be overrun by hordes of people.

The purpose of this address is to take a hard analytical look at the walkway concept, and what has and has not been achieved.

The concept was sold as something for the public good – to encourage people into the great outdoors.

But what is so important about getting people out into the great outdoors – who are we trying to cater for – who are our public? That is where I consider the planning falls down. You can measure finance, productivity and population growth – but the most difficult thing to measure is human motivation.

People are gregarious. With the move into cities people lose their initiative and individuality and the walkways concept has a justification in that it is a way of encouraging people to get out of the towns and into the country. I am aware of children from Papatoetoe who have never been to the beach even though they only live two or three miles away. It has never occurred to the parents to take them there. An increasing number of people are being deprived of the opportunity of enjoying the things we have in this country.

People have a yen for the great outdoors and this is evident from television programmes. The most popular are Tarzan, Born Free, cowboy stories, country calendar [*sic*], and the midday radio farm programme. Town people feel a need to identify with the great outdoors. The more they congregate in the big cities, the more they yearn.

The concept of walkways is attractive to people. The mention of tramping tends to put a majority of people off, but anyone who is physically able has no qualms about walking. Walking is physically within the scope of ordinary people. City dwellers are continually being intimidated by TV commercials, promoting cars, carpets, the acquisition of consumer goods and affluent lifestyles and, as well, by the physical concrete jungle with its steel and concrete barriers in which they live. These dominate their lives and make them feel the need to conform.

The great outdoors assists in breaking this barrier down. People are more able to see themselves and think clearer for themselves.

The way that plant life and animal life integrate with the natural environment is the key to human survival.

I am disappointed the walkway concept has not gone as far as I would have liked to have seen it go. I am concerned when I look at the draft policy statement, and feel we could be heading for some sort of moribund rut that a number of outdoor institutions have attained. Most outdoor activities cater to a very small elite group of people who do their damnedest to keep the great unwashed out. Their main function seems to be to maintain the status quo. There is no such thing as the status quo, you are either moving backwards or forwards.

Life is a continually changing thing … you either move with it or you are left behind.

I have been very disappointed with the way the administrators of our reserves, national parks and local body land are more concerned with maintaining the appearance of the place than they are with encouraging people to get out and enjoy the amenities.

Continued on page 39.

Continued from page 38.

We have the responsibility to meet people half way. We must not surround walkways with the same sort of aura that surrounds national parks that unless you are a member of a club and conform to the rules you are not really welcome. I have yet to see a sign welcoming people to tracks and reserves. I accept that you are going to get people who won't appreciate the finer points of ecology, but we must learn to live with these people as they have a right to the national parks too.

The influence of space and outdoors can have a beneficial effect on prisoners of the concrete jungle and administrators need to keep this in mind.

I recently came upon people destroying benches and furniture (around Coromandel) after Nambassa [Music Festival] and managed to get talking to them once they had thawed out. They were bigger and heavier than I was, and hadn't had a wash for a while. Not the sort of thing you would find in Aunt Mabel's parlour. They had made an attempt to find a motor camp, but because of their alternative lifestyle they had found they were not welcome in family motor camps. Yet they had just as much right to camp there as other people and I cannot blame them for taking their frustration out on the benches and signs.

The [New Zealand Walkway] Commission has a responsibility to ensure that the 'anti-social' element has the same access to public walkways as the more affluent members of society enjoy. We need to have a long hard look at ourselves and to put ourselves in their shoes. These are the sort of people to whom the Commission has a particular responsibility, I do not accept the fact that the public are beyond education. People can be taught to respect.

When I was walking in the Vienna Woods I was never out of sight of other people. Yet there were no beer cans, chewing gum, cigarette butts and not a sign of vandalism. This was an example of how the environment could be preserved by public disciplining themselves to protect their surroundings. I am sure this is achievable in New Zealand.

I am also of the opinion that the Commission tends to set too high a standard initially in the development of its walkway network and with the limited funds available this is slowing down the rate of progress.

With a walkway the most important thing is access. We must find out where people can go and it concerns me that there is no single source where this information is available. A central inventory of tracks and walkways is essential. I am a firm believer that as long as the commitment to get on with the job is made the finance will come available. The conditions underfoot can come later.

More imagination is necessary on potential of land for routes. There is great scope for example in the use of transmission lines, railway lines and road reserves. The dissemination of information to people is also very important.

My view is that the best method is the visual one of using a map, preferably showing the status of the land as well as the tracking systems. Maps are easily understood and we should provide them with waterproof covers for protection. The Department of Lands and Survey could learn from the Marine Department on this aspect.

I now would like to comment on access though private land. Rural land is bought for a variety of reasons. A considerable portion of land on the outskirts of urban centres is bought by city people for rural retreats, and these people generally do not welcome others onto their properties. Their main aim in buying this land is to get away from people.

It is also very valuable land. It is generally owned by wealthy people and as a rule, wealthy people are not generous people. Getting access onto some of that land will be a slow process but it is essential that this aspect continues to be pursued.

We have to look critically at our goals and objectives, to remind ourselves who we are catering for and why we are catering for them.

The walkway concept if it can be expanded and extended can embrace all possibilities for getting people out of doors, and has tremendous possibilities for rescuing people from the concrete jungle.

Ten years later, in 1989, came the New Zealand Walkways Conference. Again the written records that touch on landowner attitudes reveal contrasting impressions:

> It will continue to be a delicate selling job, requiring considerable enthusiasm, to persuade private landowners to consent to Walkways.[44]

> D Crawford [FMC president] said that many questions [about the walkways system] remained unanswered ... Access across private land was of major concern.[45]

> Landowners' Views
> Richard Drake, [of] Federated Farmers and North Auckland Walkways Committee, introduced himself as a farmer from Kirikopuni ... He said from the start there had been nothing but enthusiasm towards the concept of Walkways, allowing access to the countryside with the co-operation of Landowners. There had been no problems with landowners on Walkways – he thought there might have been one or two isolated instances.[46]

'Bob Barron was very concerned about the fact that the Walkway over his land has not been maintained … Maintenance must be improved in the future regardless of the method of administration of Walkways.'

From *The Future of Walkways: Proceedings of the First New Zealand Walkways Conference*, held in 1989.

At the same conference, Hugh Barr reviewed the achievements of the New Zealand Walkways Commission, which had been negotiating access for fourteen years:

> Walkways 1975–89
> Up to mid-February 1989 some 132 Walks covering more than 1350 km have been established ... [A table shows that 72 of these walkways were on the North Island, covering an estimated 733 km.] An estimated 202 km out of a 733 km total is across private land. More than half of all North Island Walkways appear to cross private land. [No equivalent statistics were available for the South Island.] ... However, there are still many potential walks partly on private land, that should or could be included.[47]

At the end of this conference, Tom Watson of the Walkways Commission 'concluded by saying that he thought the North Cape to Bluff concept would not happen for about 50 years, but it was a goal to achieve.'[48]

After 1989 the pace of walkways development might have slowed. According to several written sources (including the Report, page 17), the New Zealand Walkways Act 1990 has produced relatively few walkways over private land. If this claim is true, one is tempted to deduce that, as a result of the new Act, negotiating became unproductive; keep in mind, though, that the Department of Conservation has in practice placed a low priority on creating new walkways over private land (the Report, page 17).

A new twist to negotiating was added during the Otago Peninsula land war of the early 1990s, when 'submissions from the Federated Farmers group outlined a reluctance to simply gift a lease or easement over their land without adequate compensation'.[49]

More recently, Geoff Chapple of Te Araroa has broken all the records in the *Guinness Book of Negotiating*. Armed at first with little more than dynamic persuasion, he was eventually backed

by several prime ministers, numerous mayors, many landowners, much public enthusiasm, and substantial public and private funds. Also recently, taking a more local example, the Wakatipu Trails Trust seems to be achieving significant additions to the network of trails around Queenstown and the Wakatipu, partly by improving the coordination between different public agencies but also by cooperating with private landowners. Press reports have spoken of enthusiastic public support.

On the other hand, without new legislation, there may be no more tracks on the Otago Peninsula in fifty years' time than there are today. A survey has suggested 'that landholders are not in favour [of using] private rural lands for public recreation'.[50]

It must be said, though, that negotiation overcame similar problems in the 1980s on the Port Hills, near Christchurch. An earlier quote referred to problems negotiating walkways here in the 1970s, yet Christchurch City Council eventually developed the Port Hills network of tracks. Writing about the planning of this development, David Allen commented:

> Regarding establishment of walkways under the [Walkways] Act where private landowners are involved, the most important single factor was consultation with the landowners at the earliest possible date, both to explain any proposal in detail and to gain their confidence and goodwill.[51]

Despite the impressive achievements of the Te Araroa Trust, it is hard to be optimistic about the future growth of the walkway network. A 2003 New Zealand Conservation Authority booklet, *New Zealand's Walkways*, gives a figure of 'over 125 walkways totalling about 1200 kilometres'. If these numbers refer to gazetted walkways and are accurate, then since the 1989 Future of Walkways conference, there has been a reduction, in the total length of gazetted walkways, of about 150 kilometres.

I will offer the following cautionary example of landowners' benevolence, from the UK. In doing so, I will not strictly be comparing like for like, but I will still be saying something about negotiating access with private landowners. The National Parks and Access to the Countryside Act 1949 anticipated that planning authorities in England and Wales would negotiate with private landowners to establish access land, typically comprising open moorland rather than enclosed fields. In these agreed areas of uncultivated land, whose boundaries would be shown on the topographic maps, the public would have the 'right to roam'. Nearly forty years later, only about 100,000 acres or just 0.3% of the total area of England and Wales was covered by access arrangements.[52] Several planning authorities had failed to make any Access Agreements whatsoever. Negotiation had largely failed to fulfil the vision of the 1949 Act. Finally the Countryside and Rights of Way Act 2000 set in motion the mandatory creation of 'open countryside'.

I have one other reservation about negotiated access. I do not see much point in spending public money and officers' time in negotiating access that may lack permanence. The access plan, if adopted, needs to recognise that enduring solutions are preferable to short-term expedients.

'If these numbers refer to gazetted walkways and are accurate, then since the 1989 Future of Walkways conference, there has been a reduction, in the total length of gazetted walkways, of about 150 kilometres.'

Easements and Gazettal

The workshop reports of the 1979 New Zealand Walkways Seminar questioned the need for gazettal, albeit in the context of a walkway across public land:

> 4. Gazettal of a Walkway
> – where a walkway passes through public land i.e. National Parks, Reserves, local body land, etc, is gazettal necessary, or should the Minister only need to declare these areas for walkways …
> – our concern was [that] the seemingly unnecessary administration requirements caused delays and expense that seem unreasonable.[53]

The written proceedings of the Seminar also mention landowners' unease about easements:

> The apprehension of some landowners in signing an agreement declaring part of their properties as walkways was raised. The [New Zealand Walkway] Commission was requested to consider the practicalities in terms of the Act of negotiating informal access rights over private property.[54]

In other words, already, just a few years after the birth of walkways, people were contemplating half-baked arrangements, or working out pragmatic solutions, depending on how you view it.

We wonder now, looking back, Did anyone say, 'Hold on! Why did we need a Walkways Act if we're going to ignore it?' If anyone did raise doubts, it seems that they were outvoted. Informal arrangements were to quickly become part of the Commission's realistic flexibility. Just one year after the Walkways Seminar, the Department of Lands and Survey produced a pamphlet, *New Zealand Walkway Act: A Guide to Landowners*. The pamphlet's advice was presented in a question-and-answer format, and it included the following:

> 3. What are the legal procedures involved?
> [The opening paragraph briefly explains the procedures laid down in the New Zealand Walkways Act.] … In some instances you may not wish to enter into legal agreements by way of an easement or a lease, although you may have no objections to a walkway being formed across your property. This being the case, you should discuss the matter with your local district walkway committee chairman.
>
> 4. How permanent is the walkway?
> The length of time a walkway may exist is something to be negotiated with you – it can be permanent, or limited for a definite period of time, or it may cease on sale of your property.[55]

'… already, just a few years after the birth of walkways, people were contemplating half-baked arrangements, or working out pragmatic solutions, depending on how you view it.'

This pragmatism was remarkably clever, in my view, and it may have paved the way for something that no other country can boast, a brainwave from New Zealand: a national walkway system of which some parts are legally programmed to gradually vanish. Nobody knows what proportion those parts make up.

The Department of Conservation's Commitment to Walkways

Ten years after the 1979 seminar, when the responsibility for walkways was about to be transferred from the New Zealand Walkway Commission to the New Zealand Conservation Authority, doubts about DOC's dedication to walkways precipitated the New Zealand Walkways Conference of 1989:

> What has sparked this First Conference on Walkways has been concern about DOC's commitment to Walkways … New Conservation Minister Philip Woollaston is said to favour adding Walkways to the myriad of responsibilities of the yet-to-be constituted Conservation Authority and Regional Conservation Boards. FMC [Federated Mountain Clubs] and many others fear this will be the death knell of Walkways, or at least of effective user group involvement.[56]

Reading the conference report leaves you with an impression that feelings must have been running fairly high:

> User Views
> [ECO, an environmental group, felt that] to disband the Walkways Commission and Committees and not replace them with equivalent Bodies would be to ignore the knowledge, skills and natural enthusiasm of volunteers. DOC and the Walkways System would both suffer and ultimately the Nation would be the loser.[57]

But the Government had already made up its mind. The New Zealand Conservation Authority replaced the Walkways Commission as the central coordinating body responsible for controlling the administration and promotion of walkways. A gloomy note at the end of the 1989 Walkways Conference report now reads prophetically:

> Post-script – Walkways One Year On
> It is the view of Federated Mountain Clubs that the new legislation [the Conservation Law Reform Bill] does not provide a clear link between the new conservation quango structure and the Department of Conservation's day-to-day management … of Walkways.[58]

We can now, in 2003, add several more postscripts. Firstly, as I evidenced earlier, between 1989 and 2003 the total length of gazetted walkways dropped by 150 kilometres – or so it appears. It is

possible, though, that the total length of ungazetted walkway grew; I do not know whether any ungazetted-walkway figures are available.

Secondly, in August 2003 the Group published its Report, which mentions (page 17) that DOC advised the Group that it puts a relatively low priority on creating new walkways over private land. Putting this another way, DOC may to some extent be ignoring its own New Zealand Walkways Policy, which states that 'priority will be given to establishing new walkways over private land'.[59] The inconsistency becomes even sharper when we read, in a 2003 New Zealand Conservation Authority publication, that 'a major benefit [of New Zealand's walkways system] has been that many of the walkways cross (partly or wholly) privately-owned land not normally accessible to the public'.[60]

Instead of focusing on expanding the walkways system nationally, the Report says, DOC negotiates informal written agreements with adjoining landowners to establish accessways to the DOC estate; these agreements are not binding on subsequent landowners and can be revoked at any time. In other words, when DOC does add a few kilometres to the national walkways network, the agreements underpinning those kilometres may by less secure than many of us assume.

Not surprisingly, the Report (page 90) suggests that the Department of Conservation's implementation of the New Zealand Walkways Act is 'heavily deficient' and that the Act's administration needs a 'fundamental review'.

*

The third postscript brings us up to date. On 30 September 2003 the Minister of Conservation, Chris Carter, announced that DOC proposed to build 250 kilometres of new walking tracks across New Zealand over the next ten years.[61] This 250 kilometres would include about 80 kilometres of 'new day walks ... in line with the shorter time-frame of many people's recreational opportunities'. DOC is also proposing to upgrade or replace another 499 tracks spanning over 1,900 kilometres.

These proposals, and others, are part of a major review of recreational opportunities. The start of this review resulted, in May 2002, in a dramatic increase in funding 'for outdoor recreation facilities *on public conservation land* in New Zealand'.[62] (My italics.) Over the next ten years, DOC will be spending an extra $349 million on redecorating its own house.

This development has only limited relevance to the issue of linear access to private land. The $349 million will not significantly open up New Zealand's extensive network of public roads. The money may not create more than a few kilometres of walkway across private land. It will not be DOC that unlocks Forbidden New Zealand.

The Security and Permanence of Walkways

There seems some evidence to suggest that rights of way in New Zealand may not be as dependable a form of access as public roads. A common theme of PANZ statements is that Crown ownership is essential to protect public access. The forty-five-page PANZ access strategy, submitted to the Group, contains only a couple of paragraphs on walkways.[63] Walkways, according to PANZ,

are relatively insecure access mechanisms. Thirty years of effort has resulted in 'only 170 established nationwide'. We may as well forget them. Much better to open up the green roads. Or create new roads, dedicated to pedestrians and cyclists.

It is difficult for a layperson to form an opinion on the alleged vulnerability of rights of way. The Report does not penetrate deeply into this matter. I hope that the access plan, if adopted, will include an intention to examine the security of easements, leases, and covenants. Should we worry that easements are 'liable to extinguishment without public process', despite being registered in perpetuity?[64] How serious a restriction is it that walkways established under the Walkways Acts can 'be closed at any time at the instigation of the controlling authority or adjacent landowners'?[65] If it is true that rights of way may be less than impregnable, then maybe the legislation surrounding them could be fortified.

Part of the trouble with rights of way may not lie in a general inherent fragility but rather in the details of each easement or lease. An easement may not necessarily be written in perpetuity. In the last section I re-emphasised the Report's disclosure that the Department of Conservation has been creating accessways with informal written agreements. It seems, though, that this perturbing information from DOC did not sound the Group's warning bells, for the Report talks of 'more-flexible options' and 'shorter-term registrations or arrangements'. Such changes would continue the informalising of walkways, a process that I have shown is not a recent DOC invention but is an adaptation that dates back to the infancy of walkways and which ultimately stems from Walkways Acts that have lacked any form of compulsion.

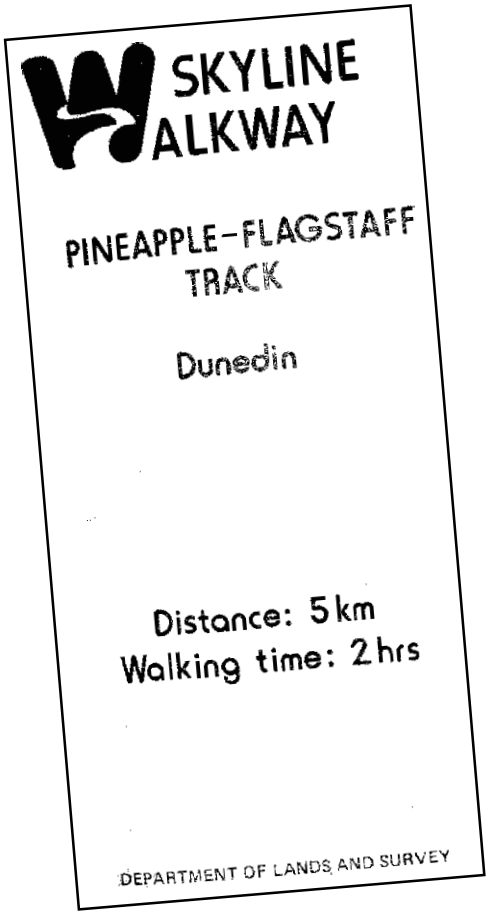
'An easement may not necessarily be written in perpetuity.'

It is difficult to comment on these suggestions without knowing what is meant by flexible, and how short is short. Are we talking decades or centuries? But even without this information, I oppose the suggestion for shorter-term arrangements. In my view, it is a major flaw in the Report. The proposal also contradicts other statements in the Report, such as 'the amount of time and resources (especially public) that will be invested in the process need to result in long-term access arrangements' (page 76).

Walkways, once established, should be virtually permanent: as close to perpetuity as it's possible to get under New Zealand law. They should also be fiercely guarded both by the access agency, if set up, and by private recreational groups. I'd rather have one permanent walkway than ten temporary ones, the lives of which could not be extended without the landowners' permissions. How can planners make long-term network plans if vital links in the network might only be around a short while? Judging from the Otago Peninsula saga, it can take ten years or more for a foot-track to appear on the printed topographic maps; are we to wait patiently for a walkway to be added to the map, only to have the walkway close a few years later? Elsewhere in this response, I have given an example of a track development, Dunedin's Skyline Walkway, which has taken twenty-nine years and which may continue for many more years. I have also included evidence to show that the national trail, now called Te Araroa, has taken thirty-six years to progress from an idea to its present, still-unfinished state.

'How can planners make long-term network plans if vital links in the network might be around for only a short while?'

Anything less than permanence would be a recipe for a repeat of the Queen's Chain confusion. We should learn from that experience. Are we to think that we have a walkway, only to learn



Walkways pamphlet, produced by the Department of Lands and Survey, 197?

On the Leith Valley side, where Otago's first industry in the form of a sawmill is reputed to have commenced about the 1860s, is the start of the Pineapple Track. Originally this track was named Ross Track after Archibald Hilson Ross who owned most of the land in the vicinity. In the early 1920s Mr Oscar Balk, first president of the Otago Tramping Club led parties of trampers up this route. At the top of a rather steep section the parties would stop to rest and often refresh themselves on a tin of pineapple. The tin was sometimes left hanging on a tree or fence and the track came to be called the Pineapple Track.

Walkways are provided so that you may experience and enjoy open country, but please remember that this privilege carries with it responsibilities — responsibilities to observe a few simple rules.

Lighting of fires prohibited.

Food packets, sweet or cigarette wrappings or any form of litter must not be left behind (carry a litter bag).

Vehicles of any variety including trail bikes may not be taken on the walkway.

Animals are prohibited, as is the carrying of firearms.

It is an offence to pick, remove or damage in any way trees, shrubs or plants. All natural features and wildlife are protected.

Let no one say, and say it to your shame
All was beauty here until you came.

Dunedin City Council's water and baths committee approved the route for the Pineapple–Flagstaff Track on 6 March 1974. It is probably one of the city's most used tracks. It forms the western end of Dunedin's Skyline Walkway, a route which is presently receiving a vital missing link, thanks to a private donation of over $100,000. The Pineapple-Flagstaff Track, therefore, was the first section of a track that is taking at least twenty-nine years to develop. Further extensions of this high-level track, to the northeast, may be possible.

Without the Walkway Act 1975, the Pineapple-Flagstaff Track would probably not exist in its present form, freely open to the public. Opinions vary about the achievements of the Walkways Acts. Some people view 'over 125 walkways totalling about 1200 kilometres' as a success. (The figures are from the booklet, *New Zealand's Walkways*, published by the New Zealand Conservation Authority, 2003.) Others view the rate of progress as disappointingly slow.

For a number of reasons there are doubts whether the New Zealand Walkways Act 1990 will lead to any significant mileage of secure walkways across private land. The Report has suggested shorter-term registration or arrangements and greater flexibility, as a way of obtaining more walkways. This could result in weak, restrictive, and vulnerable agreements.

Public Access New Zealand has commented: 'The soft, negotiated approach over private lands has failed – eg., Walkways.' (*Land Access Reference Group Report 2003 – PANZ Commentary and Checklist of Pros and Cons*, Public Access New Zealand, 18 September 2003.)

1,200-mile Track For N.Z. Trampers

New Zealand could have a 1,200-mile walking track, from Cape Reinga, at the tip of the North Island, to Bluff, in the south. The Federated Mountain Clubs have been working on a proposal for such a long-distance route for more than a year and the Forest Service has begun air investigation.

The track would traverse country ranging from gentle tussock hills to high mountain passes, linking many long-established tracks and blazing new trails.

Wayside seats, rock shelters, huts and ski lodges would provide shelter at different points, according to the locality, terrain and popularity of the area.

The New Zealand Counties Association supports the idea in principle and Federated Farmers has circulated a proposal to its provincial districts.

"The concept of more tramping tracks developed with facilities for the average New Zealander is one for which I have a good deal of sympathy," the Minister of Lands, the Hon D. MacIntyre, said.

"With growing population and increasing interest in tramping as a hobby and sport, it is obvious that other tracks will become just as popular as the Milford Track is now," he said …

The Federated Mountain Clubs first considered the idea of a national walking route at its annual meeting in May last year. The Alpine Sports Club, Auckland, raised the matter and a sub-committee was appointed by the F.M.C. with Mr W. S. Romanes as convener.

Asked "to investigate the feasibility of a scenic walking route," the sub-committee saw the main task as the early establishment of adequate legal safeguards for access and the use of routes by the general public.

One aspect of the scheme, which has been pointed out by the Heretaunga Tramping Club, is the possible danger to trampers of unexpected bad weather.

"We feel that conditions on the type of route proposed would need a great deal of consideration," the secretary, Mr G. G. Griffiths, said.

"New Zealand mountains are subject to very changeable weather even in summer. This could catch any man out and lead to death by exposure."

From the *Otago Daily Times*, 9 September 1968.

'COMMITTEE REPORTS … Nelson – Dr F E Gallas … The Committee had not lost sight of the long distance walkway proposal.'

From *Proceedings of the New Zealand Walkways Seminar*, 1979.

' … [Tom Watson of the Walkways Commission] concluded by saying that he thought the North Cape to Bluff concept would not happen for about 50 years, but it was a goal to achieve.'

From *The Future of Walkways: Proceedings of the First New Zealand Walkways Conference*, held in 1989.

'Adding It Up – From Cape Reinga to Bluff

'Te Araroa Trust has estimated the proposed Cape Reinga to Bluff trail route is 2,600 kilometres long. Of that distance, 43% is on existing trails, though some of those trails need upgrading. The 43% figure includes forest roads, and the river route from Pipiriki to Wanganui.

'A further 34% is on legal route – defined as coastline, marginal strip, and paper roads.

'Added together, these figures indicate that 77% of the proposed trail is either immediately ready to be marked up for the national route, or is on land where legal trail development could take place.'

From *Te Araroa*, the newsletter of the Te Araroa Trust, October – December 2002.

thirty years later that we don't? Will New Zealanders wake up, in a century's time, and discover that they do not have a walkway system because a cabinet of easements and leases have run their course? Our descendants will not thank us if we hand down to them legally messy walkway situations that only the lawyers will benefit from.

You might argue that this is all very fine and ideal, but that walkways occasionally need to be closed. For example, excessive maintenance costs might make it difficult for a controlling authority to keep a walkway safe. No problem. Several procedures already exist to close walkways. There is no need to make closure any easier.

A Mix of Statuses

There is another issue about walkways, not mentioned in the Report. It concerns the meaning of the word 'walkway'. In the strictest sense, walkway means a foot-track established under the New Zealand Walkways Act 1975 or 1990. In a less strict sense, walkway can mean a foot-track established with a written agreement somewhat less formal than the Walkways Act requires. In an even more general sense, the word can and increasingly does mean any foot-track, public or private.

I presume that the reference to 'over 150 walkways in New Zealand' (the Report, page 17) uses the word 'walkways' in its official sense. Yet there are countless other foot-tracks, often called walkways, not established under the Acts.

For the Dunedin area, for example, the Dunedin City Council *Track Policy and Strategy* lists 178 named tracks.[66] A number of agencies manage these tracks. Some of the tracks are walkways established under the Acts. Many are not. Some of the tracks follow public roads; their status is clear, we enjoy a common-law right of passage, bestowed under the law of highways. Others cross land managed by the Department of Conservation. Others are permitted tracks across private land, with various levels of formality. In 1998, forty-eight of Dunedin's tracks were vulnerable to changes in the attitude of the landowner. This multifarious track network, extrapolated nationally, looks to me like one hell of a national mess. It cries out for rationalisation and simplification. But it is a mess we are stuck with because we cannot establish an official, pukka walkway across private land without the consent of the landowner, and many landowners may never give this, and the Government appears unlikely to contemplate a toughened Walkways Act that includes – as a last resort – imposed easements or compulsory acquisition.

Let me summarise what I have just said. Before we think about creating any new walkways, we should tidy the present situation by converting many existing foot-tracks into gazetted walkways. This national reorganising would consolidate networks of tracks, or at least the beginnings of networks. But we cannot do this, partly because of obstructive bureaucracy and the cost of surveying, but mainly because of the feudal power of the New Zealand Land Lords. Instead, the Report suggests, we should consider 'more-flexible options' and 'shorter-term registrations or arrangements'.

'In 1998, forty-eight of Dunedin's tracks were vulnerable to changes in the attitude of the landowner. This multifarious track network, extrapolated nationally, looks to me like one hell of a national mess.'

How would Kiwis respond to the idea of more-flexible options and shorter-term arrangements for filling in the missing bits of the Queen's Chain? They would tell you to shove your flexible options up your flexible passage. And they would be wise in saying so. What is it, then, that makes walkways across private land less important than the eight reservations that make up the Queen's Chain? How is it that we can recognise access rules 'built on foundations of sand' (the Report, page 2), and yet we can contemplate adding more sand to those foundations?

One or two people down here in Dunedin dream of a high-level Otago Peninsula walkway or multi-use track, the missing backbone of the fragmented network of tracks on the Peninsula. Sometimes I wonder whether it will happen in my lifetime. Even so, the idea of short-term arrangements that don't frighten the landowners doesn't seem a sensible compromise.

By all means negotiate. But behind the negotiators, place a reinforced Walkways Act, not a weakened one. The Report (page 41) describes exclusive capture, a practice that belongs in Texas or medieval history. This capture of public resources for private gain could be prevented by creating public accessways across the private land. Yet a third Walkways Act that, like the previous two, relies solely on talking persuasively to landowners will not end the unfairness of exclusive capture.

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The access agency, if created, should commission some research to look not just at walkways established under the Acts but at all the walking tracks in New Zealand: ie, at the entire developing web. This fact-finding should investigate the various legal statuses of the tracks. Is it a system from hell, as I have suggested? Or is it a natural and sensible multi-status system, whose various parts complement each other in the emerging national track network?

The early planners of walkways partly touched on this question. During the 1979 New Zealand Walkways Seminar, 'there was quite a lot of discussion on whether existing walks over public land should be brought under the walkway umbrella.' The consensus seemed to be that there was no need to worry about the multiplicity of statuses:

> The Role of Complementary Networks
> … [The] main object is to get people walking and [the] Commission's priorities should be steered to filling the gaps between existing Crown controlled track networks … One comment made was that the Commission should not be creating another tier of walking system where existing systems were functioning without problems.[67]

This acceptance of multiple statuses was repeated in the introduction to the New Zealand Walkway Commission 'Draft Policy Statement':

> Although the concept of walkways, as established by the Act, is new to New Zealand, track formation over areas such as National Parks and State Forests has been developing for many decades. The establishment of walkways over areas of both Crown and private land is therefore seen as being comple-

'By all means negotiate. But behind the negotiators, place a reinforced Walkways Act, not a weakened one.'

> mentary to these existing track networks, and a means by which opportunities for public access to the countryside and enjoyment of it can be enhanced.[68]

I wonder now, looking back, whether this was a missed opportunity to merge a large proportion of the country's foot-tracks into one definitive status.

New Zealand's national network of foot-tracks is only embryonic: one emerging mega-trail, a number of popular long-distance walks, some long-established national-park webs (hundreds of kilometres away from where most of us live), a few medium-density local webs, many trackless wastes, very few west-east trails. Geoff Chapple questioned whether the pattern of foot-tracks would ever cover New Zealand in an interlinked way: ' … [the word] "network" is not adequately descriptive of New Zealand circumstances or what can be realistically achieved.'[69] Public Access New Zealand seems to agree with him: 'The founding object of establishing a coherent national walkway system has not been even remotely realised.'[70] I hope that time proves both Chapple and PANZ wrong. Ironically, if it does, Chapple will have done more than anyone else to establish the backbone of the national network.

A second task for the investigation that I have suggested would be to consider the possibility of unifying statuses. How many ungazetted walkways could fairly easily be upgraded to gazetted walkways, given some interdepartmental collaboration and some high-level help with the red tape? Could the gazetted status be adopted as the definitive status, for a walkway to be marked as public on the topographic maps? Or would it be more realistic to define public foot-tracks, for the purpose of showing such things on topographic maps, to include a variety of statuses? Eg, similar to those I listed on page 14.

Then the access agency could look at improving the New Zealand Walkways Act 1990. I agree with the suggestion in the Report: the Act needs a fundamental review. But I oppose any new flexibility – however well-intentioned – that reduces the long-term security of walkways.

'WORKSHOP REPORTS … MR B R SCHERER … 2. The Role of Complementary Networks. [Other networks] should be part of the Walkway network if they meet the criteria and there was no conflict in existing land uses … the taking of guns and dogs on a walkway through a State Forest Park to a traditional hunting ground is a case where conflict would arise. This was a matter for discussion with the individual Crown agency.'

From *Proceedings of the New Zealand Walkways Seminar*, 1979.

New Zealand Walkways Act 1990

Objective number one in the proposed access plan calls for strengthened leadership. Some words attributed to Paul Keating come to mind: 'Leadership is not about being nice. It's about being right and being strong.' The vigour required is clear. According to reports, Professor Bob Hargreaves, a Massey University property academic, summed it up very simply: ' … the government has to convince landowners to agree to allow access or [it has to] force the issue by passing laws'.[71]

A slightly different emphasis comes from Public Access New Zealand: 'PANZ believes that much can be achieved without legislative change, and that further progress can be made with only minor amendments.'[72] The context of this statement, though, was mainly one of solving the issues of access to public lands.

I doubt whether minor amendments to the Walkways Act will lead to significantly more walkways across private land or to more-secure walkways. Some element of compulsion is needed. When

legal rights and moral rights diverge, the diverging can continue only for so long, because it is moral sentiment that writes the law of the land. As Ralph Emerson wrote: 'The statute stands there to say, yesterday we agreed so and so, but how feel ye this article today?'[73]

In the context of walkways, there is one other possibility apart from negotiating with landowners and strengthening laws. It might provide food for thought that during the New Zealand Walkways Conference in 1989, delegates discussed seven possible management structures to replace the Walkways Commission and Walkways Committees.[74] Option number seven was 'Abolish Walkways altogether'.

The Village Common

The law doth punish man or woman
That steals the goose from off the common,
But lets the greater felon loose,
That steals the common from the goose.

Anon. On enclosures, 18th century.

Endnotes

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16 Dunedin City Council, *Track Policy and Strategy* (Dunedin, NZ: Community and Recreation Planning, Dunedin City Council, October 1998), 26.
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Toii – broad-leaved cabbage tree. N M Adams.

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'Arising from submissions and the consultation process the Taskforce identified some other funding strategies that are worthy of further consideration:

- That a levy of $100 be placed on every new car sale to be targeted for the creation of urban and rural walkways and cycleways.'

From *Getting Set for an Active Nation*, Sport, Fitness and Leisure Ministerial Taskforce, 2001.