



Walking Access – organisational structure, legislation and funding: Regulatory Impact Statement

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Ministry of Agriculture and Forestry
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Contents	Page
Summary	1
Adequacy	1
Status quo and problem	1
Objectives	2
Options	2
Preferred option	2
Implementation and review	3
Consultation	3

Summary

The problem is the lack of authoritative information about public walking access rights to the countryside, the lack of adequate public access to and along the coast and rivers, to and around lakes and to other public land, the impact of changes in land ownership on voluntary access arrangements, and the lack of any satisfactory means of resolving disputes over access.

Adequacy

The policy proposal has no significant impact on economic growth, and it has therefore been reviewed within the Ministry of Agriculture and Forestry (MAF).

Status quo and problem

At present there is no public agency with responsibility for the provision of authoritative information about walking access rights to land. Land Information New Zealand (LINZ) is responsible for the maintenance of legal records about land ownership, but these are designed for the use of lawyers, surveyors and other professional users rather than the public. Further, this information needs to be related to topographical or photographic information to be of practical use for access.

LINZ is also responsible for the production of topographical maps, but these are designed primarily for the use of government agencies, and focus on the physical characteristics of the landscape rather than the legal status of the land. Publicly accessible land that does not have an obvious physical manifestation such as unformed legal road and various forms of water margin access is not depicted. Some private roads and tracks are shown without any indication that the land is not open to the public.

There has been a popular belief that there is a strip of public land called the “Queen’s Chain” around the coast and lakes and along rivers. In reality, there is a range of publicly reserved land of varying legal status along around two thirds of the coast and perhaps along about half of the potential lake front and river margin. Precisely where this reserved land is cannot be readily identified by the public, or landowners.

In addition water margins move over time as the result of accretion and erosion, and this has affected water margin reserves so that their location can be uncertain in relation to current water margins and their effectiveness may have been eliminated by being submerged by water.

In respect of water margin reserves both the public and landowners are faced with regulatory uncertainty and inadequate property right identification.

Public access over land to water margins or to public land such as national park or other publicly reserved land is not always available or depends on the goodwill of the affected landowner. In some instances there may be access over unformed legal road, but these roads are generally incorporated in the adjacent farmland, are difficult to identify and their use may be unlawfully obstructed by adjoining landowners (e.g. by fences, buildings or crops).

Changes in land ownership and accompanying changes in landowner attitude have meant that there has been a trend away from the tradition of landowners permitting or tolerating public

access across their land. There is a concern that this trend will continue and result in long term deterioration in recreational access opportunities.

Objectives

The objectives of the policy proposal are:

- better information for the public and land owners about the location and scope of public walking access to land;
- a means of creating new public access to land where there is a demonstrated need;
- better co-ordination and policies by territorial authorities in terms of their powers and responsibilities for creating and enforcing public access; and
- a means of mediating disputes over access rights and ensuring where possible they can be resolved.

Options

Doing nothing is unlikely to improve the situation. It is possible that commercial providers of geographic information will attempt to fill the information gap by linking cadastral (legal) information about land ownership with topographical maps and/or aerial photography.

However, to be useful and authoritative, the data needs expert interpretation and to come from a single recognised source.

There is no acknowledged or effective responsibility in central or local government that will provide the leadership and co-ordination to address the widespread concerns with access that have been identified during the extensive consultations that have been undertaken.

In 2004/5 the government promoted a proposal to establish a deemed right of walking access along water margins which was designed to reduce the uncertainty of water margin access and to fill gaps where there is no such access. The proposal was strongly objected to by farmers and other landowners on the grounds that the proposal represented an uncompensated taking of an interest in land. The government decided to withdraw the proposal in the face of these objections.

The government has agreed that there should be no new legal mechanism for the creation of access across private land. Rather, there should be reliance on existing legal instruments, include negotiated access. It has, however, agreed that there is a need to establish a means for the better identification of existing access, some form of leadership and co-ordination of existing mechanisms for creating and managing access, a mechanism for negotiating and funding new access and a means for mediating disputes over access.

Three options have been identified for giving effect to the policy. These are: a branded unit in an existing government department; the creation of a new function within Sport and Recreation New Zealand (SPARC); and establishing a new Crown entity for access.

Preferred option

The preferred option is a new Crown entity. The new entity would also take over from the Department of Conservation operational responsibility for the New Zealand Walkways Act 1990. This will rationalise responsibility for walking access in one organisation, provide the new Crown entity with a valuable tool for creating one particular form of walking access, and

revive a legislative mechanism that has become somewhat sidelined in the Department of Conservation because of lack of focus and a lack of dedicated funding.

The three options for implementation have been evaluated by a consultant who specialises in public sector reform. The consultant's report concludes that:

- a branded unit within a department is the least preferred option because it would be unlikely to provide the visibility and focus that is being sought, and would not be an appropriate option for the New Zealand Walkways Act;
- the merits of the SPARC option are evenly balanced against those for the Crown entity; the focus, visibility and leadership merits of a Crown entity need to be weighed against the capability and sustainability advantages of incorporating the function in a larger organisation, SPARC; and
- there are no material cost advantages with any of the alternatives.

The three options have also been considered by the Walking Access Advisory Board that includes representation from farming, local government, Māori and recreation interests. The board is unanimous in its support of a Crown entity as the preferred option.

Implementation and review

Because the new policy is built around new access being by negotiation and agreement, the compliance costs are unlikely to be significant.

It is proposed that the legislation provide for a review of its effectiveness and continuing need after a period of ten years.

Consultation

Consultation over the underlying policy issues has extended over of four years in three separate phases: a Land Access Ministerial Reference Group that consulted widely and reported to the then Associate Minister for Rural Affairs in 2002-3; a Walking Access Consultation Panel, formed after the government withdrew its earlier policy proposal, which published an extensive consultation document, held a series of consultation meetings and sought and received a large number of written submissions (2004-06); and a Walking Access Advisory Board set up to provide advice on the implementation of the policy.

The current policy reflects the outcome of the work of the Walking Access Consultation Panel, and was the subject of consultation with government departments and Local Government New Zealand. Concerns raised by departments have been considered and taken into account.