

# Call for land access review submissions

In August 2003 the Government-appointed Land Access Reference Group reported in 'Walking Access in the New Zealand Outdoors'. There is a companion volume 'The Law on Public Access Along Water Margins' by former Registrar-General of Lands Brian Hayes. These are available from [www.PublicAccessNewZealand.org](http://www.PublicAccessNewZealand.org). and [www.maf.govt.nz/mafnet/rural-nz](http://www.maf.govt.nz/mafnet/rural-nz)

These reports follow publication by PANZ of our strategy for the outdoors: 'Improving public access to the outdoors: a strategy for implementing Government's election policies'. PANZ is reviewing this work with the intention of building on the official reports and submitting to government practical solutions not addressed by the reference group. We believe that we had a significant influence on what is and is not in the official report. However much more must be done.

The Minister of Agriculture, Jim Sutton has invited public submissions. A series of public meetings are also scheduled around the country between 23 September - 30 October to receive feedback on the official reports (the meeting schedule is on last page of this document). PANZ is considering conducting a number of our own public meetings around New Zealand. To assist in your submission making and attendance at meetings, the following is strongly recommended for your consideration.

This is the first time any Government has set out to specifically address access issues. Despite the major limitations arising from the reference group's terms of reference and the group's heavy farmer and iwi representation, their report provides a useful starting point. This is possibly a once in a lifetime opportunity to make some real progress for public access. Please don't miss the opportunity.

## Submissions are due by 30 November 2003

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Land Access Report, c/o Ministry of Agriculture and Forestry, PO Box 2526, WELLINGTON

## The pros and the cons of 'Walking Access in the New Zealand Outdoors'

### The PRO's

- Officially establishes that there is a **growing access problem** that needs Government attention, including the problem of the capture of public resources like trout through control of access.
- Records that **"New Zealanders believe very strongly that there should be practical and secure access to and along the nation's waterways, lakes and coastlines as enshrined in the commonly accepted view of the Queen's Chain and promotes embracing the "ethos" of the Queen's Chain.**
- Acknowledges that **access to the outdoors should be free of charge.**
- **Acknowledges strengths of public roads for access** – greater security than any other form of access.

- Accepts **need for accurate and clear information relating to access** “at minimal or no cost”.
- **Sees need for national leadership** on the issue of access to public land.
- Recognises that **secure access is not being provided during high country tenure reviews**.

Perhaps the most encouraging result of the report has been **Federated Farmers’ response**: “the report is positive to neutral from a landowner’s perspective”. Farmer leaders now acknowledge a necessity of formalising access along defined routes. The dropping of the idea of a general right to wander-at-will undoubtedly contributed to this reaction. PANZ can take some credit for this as we vigorously lobbied against this and for defined access.

## The CON’S

- **It is a Jim Sutton report – his appointees – his ideology** – sweep all aside and introduce new measures: “... this cultural edifice is constructed on legal foundations of sand ... The Queen’s Chain – much relied upon and ostentatiously defended...is nowhere to be found in our law ... I have come to the view that it is time to over-ride this muddle by introducing a comprehensive, legislatively-backed code of public access to the countryside” (J Sutton 1996).
- Proposals are confined to **walking access only**. A full spectrum of access must be provided for.
- **A predetermination that access through public ownership is not an option**. This reflects Mr. Sutton’s anti public ownership views about recreation lands – one that is hardly compatible with a Labour-led government and its election policies.
- **Failure to address recreational use of riverbeds, lake beds, foreshore**. Reflects disjointed terms of reference – “access” is somehow separate from recreation and the areas recreated on.
- **The Group ignored the wide range of existing legal access mechanisms** with no suggestions for their improvement, despite PANZ presenting them with 41 actions they could take.
- **Few definitive conclusions drawn**. Only two access proposals, “deeming” and “statutory trust” (being no more than undeveloped ideas). Group only deals with peripheral issues arising from existing legislation.
- **“Deeming” access along water margins** while leaving in private ownership has implication that no further marginal strips or esplanade reserves will be created. **Could amount to an abolition of the Queen’s Chain**, the essence of which are public reserves, not just “access”. Proposals certainly not an extension of the Queen’s chain as promised by Labour at the last election.
- **Recommends mediation** “to deal with conflicts between parties, both individuals and groups rather than a rights-based process and negotiated solutions”. A politically attractive, soft option which ignores existing legal rights over roads, marginal strips, esplanade reserves etc – are these to be negotiated away in cases of conflict with private interests? **Mediation avoids hard, distasteful action like upholding the law**.
- Assert that **“tangata whenua” have rights, “pakeha” only have privileges**. Propose a cultural framework for managing access (implicit over all lands, private and public).

## **Proposed Access Agency**

They propose “a small stand-alone agency to give the profile, national leadership and focus that is missing at present. To administer legislation, develop access plan, codes of conduct, negotiate provision of access, promote local solutions, provide information, mediation”.

It is unclear how this could function separate from land managing agencies like DOC and local authorities – they already have access and recreation roles. The main reason for the current “crisis” in access is the variable to poor performance by existing agencies. Duplicating their functions is both unrealistic and counter-productive. **A separate agency will likely marginalise access issues by providing a very convenient “out” for existing agencies – the central danger from this proposal.** It appears that the main reason for the proposal is that the reference group either ran out of time or ideas for action and want someone else to come up with a “grand plan”. PANZ sees no necessity for this – legislative policy direction is already in place. National access opportunities are the sum total of local provision – that need can only be perceived and actioned locally.

The challenge is to require better performance, not taking these functions away from local authorities and DOC. There is already legislative and policy direction to enhance access as matters of national importance. Why another talk-shop to further delay progress? Co-ordinated Ministerial direction across the Lands, Conservation, and Local Government portfolios is the major need. A new bureaucracy will likely be captured by vested interests with non-access agendas.

There is a contradiction that the Reference Group wants the new agency to be small, but with local capability. All on-the-ground access issues are local. How can a national body hope to attend to thousands of access issues at any one time?

There is a need to consider all options for giving national focus and direction, rather than set up a separate bureaucracy with uncertain consequences. One option is for a **Parliamentary Commissioner for Access**, to have a review and reporting role, but not have operational responsibilities. Existing agencies must not be let off their existing responsibilities. Most need some carrot, and a large measure of stick. The Commissioner, and motivated Ministers, could do this. Such an approach would not jeopardise citizen access to, and accountability and remedies from, land management agencies. It would provide a welcome national focus to bring to government attention issues requiring legislative and policy action. Policy and political decision-making must remain with Ministers and elected local authorities.

## **The Queen’s Chain**

Throughout the report there are phrases such as “eroded”, “a myth”, “the supposed Queen’s Chain”, “the theory”, “an ideal, rather than a legal entity”, “there is no legal device called the Queen’s Chain”, “a concept”, “lacks a solid legal foundation”, “an historical accumulation rather than a logical network”, and “ad hoc”.

The above statements imply that the Queen’s Chain is a myth legally and physically, or is at least seriously flawed. However the exhaustive historical record of legislation in Brian Hayes’ paper does

not support such claims. Presenting the Queen's Chain as flawed and needing a change of approach is promoted by redefining what the Queen's chain is, and by miss-portraying some current misconceptions about the Queen's Chain as historic fact. It appears that the Group, including Mr. Hayes, have been overly influenced by Mr. Sutton's views than with objective assessment of their own research.

The Queen's 1840 instructions included requirements for reserves for "recreation and amusement", "landing-places", and "for any other purpose of public enjoyment". They were intended for active public use, not merely for "access" or passage as now implied. Continued suitability for active recreation use required direct control over land use (retaining open space, free of obstruction), with the ability to provide public facilities if required, and not just for momentary passage.

Reserving water margins in Crown ownership also secured the beds of rivers in Crown ownership. Leaving river banks in private ownership as the Reference Group now prefers also leaves watercourses private with no rights of public recreation. This is not only self-defeating in terms of enabling "access" but totally contrary to the real ethos of the Queen's Chain.

**The central myths and criticisms of the Queen's Chain that the reference group advance are–**

- **The Queen's Chain doesn't cover all water margins therefore it is either flawed or doesn't exist, similarly "it is only 70 per cent complete".**

Queen Victoria didn't wave a magic wand to say every shoreline had a Queen's Chain or should have one. There was no "complete ideal" of 100 per cent coverage. The Crown could only reserve the lands it owned. It first had to acquire the land from Maori – to this day there are substantial Maori lands that the Crown will most probably never own.

Therefore achieving 70 per cent coverage, in spite of these limitations, is a remarkable achievement. Where opportunities exist, and public purposes would be served, extension of coverage along the coast, and the banks of major rivers and lakes is what is needed, not fallacious depreciation of the efforts of our forebears.

- **"There were no legislative requirements for water boundary reservations enacted until 1892, with an absence of statutory backing for the Queen's Chain concept prior to that time".**

This implies, through selective confinement of description of legal measures to just Acts of Parliament, a lack of earlier legal authority for the Queen's Chain. This is more "legal foundations of sand" argument ex Mr. Sutton.

Mr. Hayes exhaustively documents a succession of ordinances, proclamations, and Acts by the Governor, Legislative Council, and provincial governments from 1843 onwards. It would be a revolutionary revision of history and constitutional authority to believe that such measures were unlawful. It wouldn't just be the Queen's Chain that would be over-turned – it would be all governance prior to a national general assembly being first established in 1854.

**The central flaw with the conclusions of the reference group is a pre-determined ideological bent against considering public ownership as a valid means of securing public access –**

“At the heart of this debate, the core issue appears to be whether:

“the concepts implied in Queen Victoria’s instructions and articulated by McKenzie in the Land Act 1892 remain valid and need to be reinforced; or

“access is now subsidiary to property rights”.

The report’s writers have decided on the latter. It is an admission that what they propose is inconsistent with “the concepts implied in Queen Victoria’s instructions”, i.e. the Queen’s Chain.

They also concluded that “improving the present level of access by relying on the status quo is probably unrealistic. The length of time to make advances in the amount of access to and along waterways will be many decades, if ever, at the current pace” and that is “not feasible to assert Crown ownership over the entire Queen’s Chain”. How they were able to conclude this apparently without information on the current rate of marginal strip creation on lands of the Crown, or esplanade establishment from private lands, is unknown. It is also not desirable, let alone feasible, to assert Crown ownership along all water margins, as erroneously implied from reference to a fictitious “entire Queen’s Chain”.

### **What to support**

- access to the outdoors being free of charge.
- Government providing accurate and clear access and public lands information “at minimal or no cost”.
- Review of South Island high country tenure reviews to ensure that secure access is being provided.

### **What to demand**

- Government honouring its election promises to extend the Queen’s chain (i.e. provide public reserves), and to close any legal loopholes that permit the sale of access rights for sports fishing and game bird hunting.
- “Deeming” of access not to be a substitute for the Queen’s Chain.
- Providing for all forms of public access (the means of access to be determined locally).
- Retention of Crown ownership over foreshore, river and lake beds, and provision of public rights of recreation.
- Greater compliance with the law by local authorities and DOC.
- No “cultural framework” for managing access.

## What to ask for

- Ministerial action to improve agency performance across Lands, Conservation, and Local Government portfolios.
- Extra resources to LINZ, DOC, and local authorities if necessary to enable them to do their jobs properly.
- A Commissioner for Access, with a reporting role to Parliament.
- Official preference for securing access through the creation of public reserves, footpaths, cycle ways, bridle paths and vehicle tracks.
- Adoption of the Queen’s Chain strategy below, with necessary law changes.
- *Amendments to legislation*

### Public Roads

- Create a duty for local authorities to assert and protect public rights of passage along public roads.
- Create offence provisions for failure to signpost gates across formed public roads as “Public Road”.
- Introduce offence provisions for misleading signs or notices on or near roads that are likely to deter public use.
- Make Crown resumption of unformed roads subject to public “stopping” procedures.
- Ensure retention of property frontage and practical, public access to public reserves, lakes, rivers, and the sea coast when local authorities and the Environment Court make road-stopping decisions.

### Fishing & Hunting Access

- Amend the Conservation Act to make it an offence to sell or let the right of access to fish in any freshwater.
- Amend the Wildlife Act to make it an offence to let for fee or reward any right of access to hunt or kill game on any land or on any water on or adjoining any land.
- Amend the Conservation Act to allow any rivers or section of rivers be closed to all angling when exclusivity or private or commercial capture of that river has occurred.

## A Queen’s Chain Strategy

### Preamble

1. The Queen’s Chain arose from Instructions from Queen Victoria.
2. The true “ethos” of the Queen’s Chain is the retention of a one chain (20m) wide water margin (i.e. along river and lake banks, and above high tide) in Crown ownership for public purposes for all time, free of private encroachment and occupation.
3. The Queen’s Chain is about public ownership of water margins for a variety of purposes – public recreational use, riparian management (conservation of riparian values and water quality, retaining open space free of obstruction) – and not just for “access”.
4. The sole basis of the Queen’s Chain presumption is that adjoining foreshore (i.e. below high tide), seabed, river and lake beds are also in Crown ownership and available for public use. There is no point in providing access or public reserves along river banks if the beds are private.

5. It is unrealistic to expect complete coverage along all water margins. Some shores and banks have to be off-limits to the public (see “exemptions”). The notion that the Queen’s Chain has failed because 100 percent coverage has not been achieved is nonsense. The notion that access can be “deemed” to exist (without public reserves) along all water margins is also nonsense. Prior assessment of individual shores, waterways and lakes has to be undertaken.

6. Without mass confiscation of private property there is no other way to extend coverage other than through progressive “ad hoc” action (on disposal of Crown land and subdivision of private land as at present, and possibly additional triggers). This process has achieved approximately 70 per cent coverage. Accelerated coverage can be achieved by more consistent application of existing mechanisms. Our forebears had the vision that created the legacy we now enjoy – this generation should continue the vision rather than succumb to impatience and impulses for “quick fixes”.

### **Objectives**

Make all existing Queen’s Chain reserves serve their intended function of providing practical access along the margins of waterways, for recreational use of water margins, and protection of riparian open space and natural values, and

Progressively extend coverage through enhanced mechanisms on the disposition of Crown land and the subdivision of private land, securing public ownership and access along both banks and waterways.

### **Means**

- Make all existing water-side reservations and roads movable and dispose of redundant fixed strips.
- Review exemption provisions in the Resource Management and Conservation Acts to ensure greater provision of esplanade reserves and marginal strips.
- Progressively replace private esplanade strips with public esplanade reserves.
- Restore public access and recreation as purposes for esplanades.
- Progressively extend public reservations (subject to exemptions) –
  - along the shores of all sea coasts and tidal estuaries
  - along the banks of rivers and streams 3 metres or more average bed width
  - along the shores of lakes 4 ha or greater in area from private land and 2 ha or greater from Crown land

### **Exemptions**

- Operational ports / wharves
- Bridge abutments
- Defence areas
- Dam abutments, powerhouses (with bypassing access provided)
- Nature sanctuaries
- National parks, conservation areas, scenic and recreation reserves (access already secured)
- Maori customary land (inclusion would be contrary to Queen Victoria’s instructions).

## *Official Meeting Schedule*

<b>DATE</b>	<b>LOCATION OF THE MEETING</b>	<b>PUBLIC MEETING VENUE</b>	<b>ADDRESS</b>	<b>Time</b>
23-Sep	Taupo	The Events Centre	AC Baths Avenue	7 pm to 9.00 pm
24-Sep	Rotorua	Convention Centre	1170 Fenton St.	7 pm to 9.00 pm
29-Sep	Greymouth	Ashley Hotel	74 Tasman Street	7 pm to 9.00 pm
30-Sep	Christchurch	The Russley Hotel	Roydvale Avenue	7 pm to 9.00 pm
3-Oct	Geraldine	Geraldine Pavilion	Geraldine Domain, Hislop Street	7.30pm to 9pm
7-Oct	Waitakere	Kelston Centre	The Kelston Community Centre 126, Awaroa Road, Herderson	7 pm to 9.00 pm
8-Oct	Takapuna	Bruce Mason Centre	Crn Hurstmere Road & The Promenade	7 pm to 9.00 pm
9-Oct	Auckland Central	Barrycourt Best Western	10-20 Gladstone Road, Parnell	7 pm to 9.00 pm
9-Oct	Gisborne	Gisborne Cosmopolitan Club	190 Derby Street	7 pm to 9.00 pm
10-Oct	Napier	Taradale Club (Inc)	56 Wharangi Road	7 pm to 9.00 pm
13-Oct	Dunedin	Southern Cross Hotel	Cnr Princess & High Street	7 pm to 9.00 pm
14-Oct	Cromwell	Golden Gate Lodge	Barry Avenue	5 pm to 7.00 pm
14-Oct	Blenheim	Admirals Motor Lodge	161 Middle Renwick Road	7 pm to 9.00 pm
15-Oct	Invercargill	Invercargill Working Men's Club	154 Esk Street	7 pm to 9.00 pm
15-Oct	Nelson	Trailways Motor Inn	66 Trafalgar Street	7 pm to 9.00 pm
16-Oct	Wellington	James Cook Hotel Grand Chancellor	147 The Terrace	7 pm to 9.00 pm
17-Oct	Masterton	Masterton District Council	64 Chappell Street	4 pm to 6.00 pm
20-Oct	Hamilton	McMeekan Centre Rukarua Research Centre	East Street	7 pm to 9.00 pm
21-Oct	Whitianga	venue to be confirmed		
21-Oct	New Plymouth	Grand Central Hotel	42 Powderham Street	7 pm to 9.00 pm
22-Oct	Tauranga	Bureta Park Motor Inn	Vale Street	5 pm to 7.00 pm
22-Oct	Palmerston North	Sherwood on Featherston	251-256 Featherston Street	7 pm to 9.00 pm
28-Oct	Whangarei	Forum North	Rust Avenue	7 pm to 9.00 pm
29-Oct	Paihia	The Park Lodge on Paihia Scenic Circle Hotels	Seaview Road	5 pm to 7.00 pm
30-Oct	Kaitaia	Collard Tavern	PO Box 735, Whakatane Drive	5 pm to 7.00 pm