Campaign off to great start

'Public Access'
No. 2 March 1993

Public Access New Zealand's *'Public Access—Public Ownership Campaign,'* launched last October, has attracted support from individuals and groups that collectively represent 20,000 people. This is a most heartening response which clearly validates the campaign and its concerns. It also gives hope that New Zealand's slide towards privatisation of the outdoors and loss of public access can be reversed.

This is no town verses country conflict. Support has come from both urban and rural people, right throughout New Zealand. Four national federations have affiliated as well as approximately 30 regional and local groups. The range of interests represented includes anglers, hunters, walkers, trampers, climbers, skiers, horse riders, canoeists, four-wheel drivers, sea kayakers, divers, tourist operators, outdoors guides, conservation and environmental groups. This appears to be the first time such a diverse range of interests have been prepared to subscribe towards common recreational goals.

This is quite an outstanding result considering the short time-frame and our minimal coverage by the news media. The latter has generally demonstrated a reluctance to run public access/public ownership issues. It appears that this is partly because our message runs counter to the prevailing orthodoxy of free-market private property rights. Or it could just be that they don't consider it 'newsworthy.'

The challenge ahead is to build further support and translate it into effective political action this election year, and thereafter.

Your comments on PANZ

Back to our campaign so far. This is what some supporters have had to say—

"Your first issue of *Public Access* is superb!"

"I whole heartedly agree with your aims and objectives...unless we act collectively, very soon life in the outdoors of NZ will never be the same. So much we take for granted today will eventually be there only for the privileged few."

"The (XYX) Tramping Club support your action and we are grateful that somebody like yourselves have taken up the challenge to protect our access to the various public estates."

"Public access rights to public lands, lakes, rivers, and beaches is non negotiable."

"Congratulations on the launch of Public Access New Zealand...In the most recent recreational user survey the (XYX Fish & Game) Council has being undertaking, 'access' has remained one of the most common issues identified by respondents."

"We are pleased to support the excellent work of your group" (accompanied by donation of $1000).

"Congratulations, a fine effort...I'll be amazed if you can fill the second newsletter with so much information."

"Thanks for the copies of your timely, well written, researched and argued publication" (a national organisation).

"We view the current government actions over access and the policies of both the present and past administrations with the utmost concern. We mistakenly believed that access to our rivers, lakes, foreshores and National Parks was as most New Zealanders believed, sacrosanct. Our forebears endeavoured to protect these amenities, for all people for all time. What we are seeing are early moves on what could end up as private waters and beaches and having to pay for the use of our national parks...our committee offers our whole hearted support to your aims and endeavours" (from a club of 700 members).

"Public Access No. 1 is certainly compelling reading, a mine of information and sums up the problem of access protection very well...If we don't create an awareness among outdoors users of the conservation estate and of their loss should it fall into commercial and private hands we will have failed the community of today and tomorrow."

"I feel like you, I'm an old age pensioner now and permanently disabled—I cannot do what I used to do, and I don't want to, but I realise how you feel...when I was young I used to go walking...NZ is not like it used to be...best of luck for the future."

"Keep up the good work. There's nothing like knowledge to effect change!"

Contents

Other feed-back from throughout the country indicates that access problems are universal, that they are increasing, and a lot of people are fighting lone battles. This is often without knowledge of others' efforts and similar experiences. Already PANZ has been able to provide technical advice and assistance, plus shared experience, on several cases. We intend to extend that help as well as focus on obtaining policy commitments from political parties for the general election.

PANZ Incorporated

The outstanding response has necessitated the rapid transformation of PANZ from an informal group of individuals to a registered charitable trust run by a Board of Trustees. We were concerned that several thousand dollars of contributions required proper financial control. As required by our Deed of Trust we have appointed a qualified chartered accountant as honorary auditor.

We are charged with the following objects—

The preservation and improvement of public access to public lands and waters and throughout the New Zealand countryside in general; and the retention in public ownership and control of all publicly owned lands and waters with value for public recreation and/or nature conservation, all inland and coastal waters, and recreational resources therein.

In furtherance of these objects:

- To promote recognition of protection and enhancement of public recreational access as matters of national importance in law, official policy, and governmental practice.
- To promote public recognition of recreational, health, inspirational and other benefits derived to New Zealand of freely available recreational access for all.
- To monitor, research, and advocate public ownership and management over resources suited for public recreational use.
- To research the origin and status of public access rights, privileges, and public ownership and management over publicly held lands and waters, and to disseminate and publish the results of such research.
- To investigate mechanisms for public recreational access overseas that might have application to New Zealand.
- To formulate policies for the better provision and management of public recreational access and use.
- To promote recreational practices conducive to the protection of natural and recreational resources.
- To encourage different outdoor recreational codes to work cooperatively towards furtherance of the objects of the Trust.

We recognise that our structure and representation may need to be changed in the future to better serve our objects. Our Deed of Trust requires the Trustees to review the organisation within two years. This may result in a broad geographic as well as recreational representation. Initially we feel that our efforts and resources are best put into fighting access issues and spreading the message, rather than establishing and servicing a bureaucracy. The breadth of support obtained so far indicates that this approach appears acceptable in the mean time.

Researcher Appointed

Trustee Bruce Mason has been appointed as PANZ Researcher on a temporary basis. Your financial support has made this possible. Bruce brings a wealth of practical experience to the position. He is an active outdoor recreationalist with a record of eighteen years of professional engagement in conservation and recreation planning, advocacy, and management both in Government and non-government organisations. In more recent years he was at the forefront of the campaign concerning Crown land allocations between SOEs and DOC, in protecting the Queen's Chain, and the pastoral high country of the South Island. He is the author of several publications concerning conservation, recreation and access. **More financial support is needed to ensure that PANZ can maintain a well-researched basis for its activities.**

All the other functions of PANZ are voluntarily undertaken by trustees and supporters.

Your help is essential

There is much of urgency to be done this election year. If you agree with our objectives and approach we need your help. We have determination, experience, skills, and lots of enthusiasm. Unfortunately that is not enough. What we need is more cash and popular support if we are to become really effective.

If you have already supported us please consider further financial contributions and/or enlisting the support of others. We promise to respect your privacy—we will not disclose to anyone who individual supporters are without their prior consent. But if you wish to tell the World what a worthwhile organisation we are and you support us, great! If you would like to discuss avenues for assistance first please contact one of our spokespersons direct—

Brian Turner	(03) 472 7010
Bruce Mason	(03) 476 1544

Your last issue of *Public Access?*

Unfortunately because of overheads, if you haven't already subscribed or donated to us this will be the last issue of *Public Access* you will receive. We currently have a mailing list of approximately 1500. Multiply that by 45c plus printing costs and you will appreciate that we cannot continue indefinitely with supplying free goods.

Please fill out the enclosed supporters' application form and post now

Maori land claims and 'partnership'

A major challenge to be faced is the potentially divisive issue of Maori land claims as they affect the public conservation estate. There has not been an open debate so far; Government is avoiding this, preferring secret negotiations, assertions that there is nothing to fear, or by sneering at anyone who dares to question. Most pakehas are so uncertain as to the meaning or relevance of the Treaty of Waitangi, or are immersed in 'cultural guilt,' that it seems safer to let matters lie. Thus there is a real danger for public lands and their future availability for public recreation.

At the risk of being denigrated by those who consider they alone occupy the 'moral high ground' on Treaty matters, this issue looks more closely at settlement of the Ngai Tahu land claim. We also touch on the implications arising from applying the 'principles' of the Treaty to the public conservation estate. The Mount Hikurangi case provides graphic illustration of what we fear from privatisation in the name of 'partnership.'

We conclude that Government-moves to divest public ownership and control over the South Island high country is a confidence trick.

This arises through misrepresentation of the Waitangi Tribunal's Ngai Tahu land claim findings. The Tribunal held that none of the South Island high country was unlawfully purchased by the Crown (see pages 9-13).

We are not alone in suspecting that Government's agenda is primarily driven by financial considerations. The economic consequence of using conservation areas and national parks for settlements is negligible. That is compared to parting with SOE assets that give good financial returns, either through dividends or by high sale prices on privatisation.

The bipartite process adopted to date for claim settlement assumes that the Government already has the knowledge and a mandate from its constituents to settle claims, proven or unproven, with whatever natural resources it deems appropriate. The fact is that such a mandate has never been obtained in accordance with any recognisable public process, and there does not appear to be any intention to remedy this.

Fundamental changes to the founding 'preservation-with-use' and public ownership philosophy behind the conservation estate may also be in store. The notion of a 50:50 partnership between the Crown and Maori has currency. We suspect that this is based on questionable interpretations of Treaty 'principles.' These are being applied through all areas of Government with resource management responsibilities.

There appears to be a major gulf between the existing legislative purposes for Crown protected areas and the variously expressed 'conservation-for-utalisation' preferences of many iwi. This conflict of objectives must be openly debated.

Separate from claim settlements through the Waitangi Tribunal, DOC appears set to divest public ownership and instigate 'co-management'over the conservation estate in general. This arises from DOC giving effect to the 'principles' of the Treaty. There could be profound impacts on the nature of 'public' lands, how they are managed, and for who's benefit.

Whatever the intentions behind the changes it is distinctly undemocratic for the public, as owners of the conservation estate, to be left out in the cold by Government.

Implications for public access and recreation of giving effect to the 'principles' of the Treaty of Waitangi is subject to research by PANZ. We intend reporting next issue.

PANZ acknowledges the legitimacy of Maori claims *proven before the Waitangi Tribunal* and the need for Government to settle those claims. There should be consideration of the return of the land in question, and alternatively the use of other assets, to arrive at equitable settlements.

South Island High Country

Runholders Strike Back

After enduring years of criticism of their land management, South Island runholders have hit back with a 24-page glossy, large format production titled '*Spirit of the High Country, The Search for Wise Land Use.'* This is a well-packaged impression of high country life. It relies more on photographic image than on substantive text to convey its message. Design and art production are by Creative Advertising Limited.

The alluring nature of the high country leaps out of the pages. Everyday activities of the farming community are well illustrated. One could gain the impression that the dramatic landscapes and tussock grasslands are *due to pastoral farming.* However scenes of splendour with stock in and along water margins, will invoke very different responses from fisheries managers, as opposed to farmers.

An acknowledgment that *most,* rather than '*some,'* scientists believe that invasion of tussock grasslands by hieracium is due to depletion and overgrazing, would generate more sympathy for the predicament most runholders now face. Greater attention to accuracy would have helped elsewhere. A caption reads *"New Zealand's High Country — Ours to Share"* overlays a photograph of Crown and conservation land in the upper Ahuriri Valley. This incorrectly conveys private ownership over public land. The caption sets the theme for the publication which is: "this is our country; hand us the ownership of 'the problem' and of commercial values; and freehold brings responsibility." Well-worn themes that rabbits and weeds are causes not symptoms of land degradation continue to fly in the face of most scientific opinion.

The 'sustainable management' purpose of the Resource Management Act is advocated rather than continued controls under the Land Act (see our discussion of the RMA further on).

We obviously differ with the private property thrust of the publication but are pleased to note a willingness to embark on tenure reform. The publication proposes negotiated trading of rights between the Crown and the lessee on an individual run basis to balance the farmer's needs with those of the public.

Conservation values not protected

As a result of runholder challenges to DOC and Landcorp declining burning permits, the Commissioner of Crown Lands has accepted legal opinion that some public interest considerations are *ultra vires* (beyond the powers of) the Land Act. This means, contrary to years of government policy and assurances, that nature conservation cannot be taken into account in decisions about burning. This places the protection of natural values in jeopardy —over all 2.5 million hectares of pastoral leasehold. Reform of the Land Act is now urgently required to close this gap.

What's happened to categorisation?

In our last issue we outlined the history of pastoral leases and successive government proposals for 'categorisation.' It has been proposed that each run or lease would be individually assessed into three categories:

- areas primarily with high nature conservation and recreation values;

- areas with high potential for intensive farming/alternative land uses, and;
- an extensive middle category of 'unimproved' native grasslands that *may* be able to sustain restricted grazing; also with provision for public use.

The proposals entail public submissions being sought to help identify conservation and recreation values. Direct negotiations between the Crown and lessee would then determine any changes in tenure. Agreement would be reached on the basis of an (equitable) exchange of property rights between Crown and lessee. These property rights are capable of monetary valuation.

The intention would be that 'conservation' areas would be allocated to DOC. Freehold would be offered to the runholder for the better primary production land. A special lease designed to protect the environment would be offered over the balance. Public accessways and use rights would be provided as part of the deals. **A new Land Act incorporating the above has been drafted and awaiting introduction for several years.**

PANZ supports the phasing out of pastoral leases through a three-way categorisation process. This would permit better protection of natural values and the provision for public access and recreation.

Currently trespass rights prevail over all the area held under pastoral lease, irrespective of whether the land is grazed or not. This is an anachronism that must be removed.

An alternative approach has been advocated by rangelands researcher Chris Kerr of Lincoln University. Kerr contends that the middle category of 'unimproved' tussock grasslands cannot sustain any grazing. He advocates the Crown buying out lessees' interests over this category and managing it for conservation purposes. He points out that pastoral production is collapsing due to land degradation. It is costing the Crown more in failed Rabbit and Land Management Programmes and administration costs than the $70 million he estimates it would cost for his solution (*Otago Daily Times* 27/2/93). This would be an infinitely faster process than incremental categorisation which could span decades. The Kerr solution is worthy of serious consideration by Government.

As we reported in our last issue, up until early last year, Rob Storey, Minister of Lands, was advocating categorisation. However in the last year the Government has gone cold on any tenure reforms. His advice to the Minister of Conservation of 21 August 1992 indicates why. He records the Crown's intention for comprehensive land tenure reform on an "all or nothing" (ie. not piece-meal) approach. However categorisation proposals had been "curtailed by the need to give our colleague the Minister of Justice an unfettered opportunity to complete the Ngai Tahu negotiations." The Minister of Justice wrote to Mr. Storey to ask that any reform proposals be put on hold.

PANZ can understand why Government had to reserve its position while the Waitangi Tribunal was still considering Ngai Tahu claims and its findings were unknown. However **the Government has known since early 1991 that the Tribunal agreed with the Crown's submissions that the South Island high country was legally purchased from Ngai Tahu** (see pages 9-13). **Despite the finding against Ngai Tahu, tenure changes are still only occurring with Ngai Tahu consent.**

Freehold proposals mixed bag

Approximately 20 pastoral leases are currently being considered for partial freeholding, unfortunately without the breadth of an "all or nothing" approach envisaged under 'categorisation.' Several lessees with commercial objectives in mind have applied for freeholding. In other cases DOC has instigated negotiations with the objective to securing reservation — mainly under the Protected Natural Areas Programme.

Unfortunately the PNA Programme is not designed to address such matters as access, recreation, and landscape protection. It concentrates on identifying 'representative' and outstanding natural areas. The public at large has not been asked to identify what's important to them, such as the protection of the extensive open space values and specific access needs.

The pay-off to the farmers from deals is the offering of freehold over everything outside PNAs. Sometimes the freehold title will have conservation covenants registered against it. This is in cases where there are natural values which in DOC's view still require protection (PANZ does not believe that covenants are secure, or an acceptable alternative to public ownership). Often the deals result in very inadequate provision for public access. There is an air of desperation and frustration about these deals, arising out of Government's unwillingness to move on reform of the Land Act.

Major anomalies are becoming apparent. Simple two-way splits between DOC and farmers will lead to the loss of most 'unimproved' tussock grasslands into private ownership. Such an approach ignores the grazing sustainability question raised by Kerr and others.

The extensive tussock grasslands are the heart of the high country and what gives it its prevailing character. Such lands are usually only seasonally grazed. They also provide opportunities for extensive recreation such as tramping and cross country skiing, or are highly valued as the backdrop for other recreations. These are the lands of the 'middle' category. These are primarily Land Use Capability Class VII (see box) which are officially recognised as having severe limitations to pastoral use.

PANZ believes that the offering of freehold over Class VII and VIII lands is *ultra vires* the Land Act —we intend challenging such deals.

Land use capability

Class I	Virtually no limitations to arable use
Class II	Slight limitations to arable use
Class III	Moderate limitations to arable use
Class IV	Severe limitations to arable use
Class V	High producing land but unsuitable for cropping
Class VI	Non arable: moderate limitations for grazing
Class VII	Non arable: severe limitations for grazing
Class VIII	Unsuitable for arable, pastoral, or forestry use

Our Land Resources, NWASCO. 1979.

The Otago-Southland high country is currently receiving most attention for two-way deals. Three leases cause particular concern. If proposed deals on them are allowed to proceed precedents will be set for the rest of the high country.

Closeburn near Queenstown: Proposals to freehold approximately 700ha of the steep back-drop to Moke Lake. Classes VII and VIII between1700 and 3500 feet above sea level.

Michael Peak on Mt St Bathans: Proposal to freehold approximately 1500ha of Class VII between 2500 and 4300 feet.

Waiorau on the Pisa Range: proposal to freehold approximately 2000ha Class VII between 3500 and 5000+ feet. Part of area identified under PNA Programme.

We are also concerned that freehold may be offered to Ngai Tahu over all the pastoral leases—**Greenstone, Elfin Bay, Routeburn**—purchased by Government for land claim settlement. **The vast majority of these leases would never legally qualify for freeholding due to their land use capability, irrespective of the outstanding recreation and conservation values which dictate retention in public ownership.**

ACTION BOX

Ask your MP for assurance that, if elected to the next Government, they will vigorously pursue reform of the Land Act and categorisation.

PANZ and kindred organisations intend making reform of high country tenure an election issue.

Surrender of 'Land Unsuitable for Grazing'

A brighter spot on the high country scene is the progress being made to remove from leases some alpine lands. In the last issue we reported on large areas of alpine land still in pastoral leases despite often long-standing legal agreements to 'surrender' them to the Crown. These deals involved the payment of millions of taxpayer dollars to runholders. For several decades it has been Government policy to destock and then remove from leasehold Class VIII and severely eroded Class VII lands. These have been officially referred to as 'Land Unsuitable for Grazing.'

In a welcome reversal of policy, the Department of Conservation has obtained the consent of their Minister to expedite survey of all outstanding areas this summer so that they can be added to the public estate. DOC was previously reluctant to accept such lands. The Government's current policy is that all such areas be surrendered before embarking on categorisation of the balance of the leases. This is so as to avoid a situation of lessees attempting to unfairly enhance their bargaining position. **PANZ congratulates DOC and Government on this initiative.**

On completion of transfer back to the Crown, over 100,000 hectares of alpine and sub-alpine lands with high conservation and recreation values will become available for public use.

Thanks to those who pursued this matter after we raised it in the last newsletter.

Sea Shore

User-pays beaches?

Alarming noises about user-pays beaches in New South Wales have been quashed by the State Environment Minister. The Federal Resource Assessment Commission recommended radical moves to control coastal damage and pollution caused by tourism. The commission said that all popular beaches should be fenced and visitors charged admission. In response, a spokesman for the state government said that the idea was "un-Australian" and they would not have a bar of it. Beaches are a national asset and should be protected by national funding. "The report disregards the existing NSW coastal policy which ensures that beaches remain in public ownership and have total public access," he said (*Otago Daily Times* 2/2/93).

Parallel arguments to that of the above commission are originating within the New Zealand tourism industry. This is in regard to public access to the whole public estate. We will have to ensure that such ideas are quickly labelled "un-Kiwi."

In the next few months PANZ plans to research the law related to beaches and foreshores in New Zealand. Hopefully this will bring to light avenues for protecting everyone's right to visit the beach.

Boatsheds and foreshore misuse

Changes brought about by the Resource Management Act may be setting the scene for a proliferation of coastal clutter and displacement of recreational users of foreshores. No longer is the coastal environment protected from "unnecessary" development. The RMA now only provides protection from "inappropriate" subdivision, use, and development.

In a recent decision by the Otago Regional Council, objections were dismissed to an application to change the use of an existing boatshed to a commercial pottery. An objector argued that such a use was unnecessary and inappropriate on a foreshore as a land location would equally serve the purposes of a pottery; that such a use and the precedent it establishes will ultimately displace users of the Otago Harbour who are dependent on foreshore use for access and boat storage; and the natural and open space character should be maintained as far as possible, consistent with marine recreational and commercial requirements.

The applicant, in effect, sought retrospective approval for an unauthorised extension and change of use to a boatshed. This was in breach of an existing boatshed licence. A key element of the objection was that the applicant did not actually hold a boatshed licence. Change of ownership had occurred without prior consent of the former licensor, being another breach of the terms of the licence. He was therefore not entitled to seek amendment to its terms. The Council quashed that objection by first issuing a 'boatshed' licence (not applied for in the application for resource consent) then agreed to amendment of its terms to allow use as a pottery. So much for due process!

Others have been watching this development. Some long-standing boatsheds in the locality have subsequently sprouted outwards with all the accompaniments of well-appointed batches —with the boats now parked outside!

ACTION BOX

PANZ is interested to hear if anything has changed elsewhere, in the pattern of boatshed use or new developments, which may affect public use of foreshores.

New Zealand Coastal Policy

Submissions closed on 19 February with the Board of Inquiry. This is charged with recommending to the Minister of Conservation any changes to the draft New Zealand Coastal Policy Statement. PANZ made a submission on public access aspects.

PANZ is primarily concerned that the requirement under the Resource Management Act for "the maintenance and enhancement of public access to and along the coastal marine area" under s 6(d), should become a principle of the coastal policy. This is after all a matter of national importance in the Act. We see the absence of due weight on access in the policy to be a serious flaw. This is reflected by copious provisions for restricting and prohibiting public access, for reasons not related to the purpose of the Act.

PANZ has proposed that maintenance and enhancement of public access become a principle of the policy. We have suggested specific requirements for regional and district councils—

- produce definitive maps of access ways and public lands;
- specify in plans means and priorities for improvement of access;
- provide public information, way-making and signposting.

Queen's Chain

Esplanade reserve changes

Subscribing supporters should have received our circular about the Resource Management Amendment Bill. We hope this was helpful in assisting your submission-making. Your feedback assisted with PANZ's final submission to the Planning and Development Select Committee.

The Bill follows in the same vein as the highly controversial Conservation Law Reform Bill 2-3 years ago which was concerned with marginal strips. It seems that officials are hell-bent on restricting and removing access rights at every opportunity. We have seen the official briefing papers on both Bills. There is an amazing similarity in argument, omission, and devices designed to frustrate public use of the outdoors. Unfortunately this latest Bill is not the end of it.

PANZ believes that if the RM Amendment Bill is passed in its present form it will kill the whole concept of esplanade reserves in rural areas. It will also limit their application within urban areas through greater scope to waive their establishment. The Bill's alternative to esplanade reserves —esplanade covenants— are pathetic excuses for access. The proposed 'access strip' provisions are likely to be ineffectual in improving access

Esplanade reserves have been the traditional method available to fill in the gaps in the Queen's Chain. This has been by requiring reserves to be set aside along the margins of water bodies when private land is subdivided. **Approximately 30 per cent of our shores do not have a Queen's Chain. Completion of coverage is a highly desirable policy and one which we will be pursuing this election year.**

The whole approach of the Bill is at odds with the intent of the parent legislation —as expressed by section 6(d)— to recognise and provide for "the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers."

The Select Committee is yet to report back to Parliament. PANZ is to appear before the Committee.

Some alarming statistics: In anticipation of changes to the law, the Minister of Conservation has granted 106 exemptions from requirements to establish esplanade reserves and 76 applications for reductions in width (period 1 October 1991 to mid October 1992). This has been assisted by transitional regulations that allow him to do what the present Act does not allow. The Minister's powers during this period have most of the time been delegated down to DOC Regional Conservators. There is a considerable variation between regions with some granting all applications for exemptions (Auckland, Bay of Plenty, Tongariro-Taupo) —probably an indication of what will follow amendment to the Act. Devolution of decision-making is what the Resource Management Act is all about.

More in store for marginal strips?

The Department of Conservation plans further amendments to the Conservation Act. These will further weaken marginal strip provisions. Apparently DOC intends transferring title and vesting the control of reserves to non-government trustees (private/Maori trustees?). This amounts to a 'disposition' of Crown land requiring the establishment of marginal strips. The flow-on logic of DOC is that providing a marginal strip *through* a vested reserve may compromise conservation values. Therefore it is better to remove any requirement to establish marginal strips which carry rights of access. This illustrates yet another danger of loss of public control over the public estate and the nature of official thinking that places little importance on public access. If access through a reserve did not compromise conservation values while under public control, why should it when it is under private control, assuming *the same management objectives?*

PANZ believes all public reserves must stay under public control and that there is no need to establish marginal strips through public lands that already have rights of access. If reserves stay under public control there is no need for changes to the law and the inherent dangers to public access this entails. The only situations where restrictions or prohibitions on access along water margins can be justified are where there are nature and scientific reserves or wildlife sanctuaries. Public access should be guaranteed on other reserves and parks, and along the remainder of the Queen's Chain.

DOC also considers it "an oversight" that the Conservation Act does not allow for reductions in width of marginal strips along river and stream banks. Late last year DOC intended to provide for this in an amendment Bill.

Resource Management Act

Better than pastoral leases?

The RMA is increasingly touted as the answer to all our prayers for the management of natural resources. Runholder leaders, and even some nature conservation managers, argue that the RMA provides *the* solution to the pastoral high country. Some have even been heard to suggest that national parks and reserves are no longer necessary! In so arguing the door is opened to private ownership of public resources. The argument goes that since passage of the RMA and the advent of 'sustainable management' there is no longer any need for state intervention. Free-market intellectuals and economists have been vocal in

advancing elaborate but superficial arguments in support of their ideology. They have provided a source of comfort and support for runholders wanting freehold ownership over all pastoral high country.

Environmentalists have also been highly supportive of the purposes of the Act— "to promote the sustainable management of natural and physical resources." This is on the assumption that a clear conservation-orientated meaning can be attached to the words. Others are not so sure. There are important ambiguities in the definition of 'sustainable management' within section 5(2). These, and new, imprecise terminology could give, depending on the context of application and the preconceptions of readers, environmental *or* developmental emphasis.

While New Zealand is viewed internationally as a leader with "one of the most progressive pieces of legislation in the world" (USA Professor Stephen Born *ODT* 23/12/92), judgment is reserved as to how it will work out.

In New Zealand legal literature a vigorous debate has waged over the meaning of section 5 (the purpose). Even the chief proponent of the Act, Sir Geoffrey Palmer, has stated that he doesn't know if the Act will work. It will take litigation through to the Court of Appeal (NZ's highest court) to determine the meaning. Sir Geoffrey has doubts that the balance struck in the Act can produce a 'win-win' situation. The context in which 'use, development, and protection' (s 5(2)) is applied, while having equal weight, may result in very different results from what opposing development-conservation forces expect out of the Act (Sir Geoffrey Palmer, University of Otago; 28/7/92).

The lengthy period of consultation and passage of the Act enabled proponents of various viewpoints to hold the comforting belief that "their" cause was in the ascendancy. However the wording of the Act does not favour one side or another. Parliament left it to the Courts to make the key decisions. If you are waiting for a quick resolution of the question you are liable to be disappointed. It took 28 years for the importance of "matters of national importance," relative to other matters in the former Town and Country Planning Act, to reach the Court of Appeal for determination.

The RM Act is concerned with the maintenance of physical bottom-lines of environmental quality. These must not be compromised by human activity, rather than being concerned-with regulating the activity per se. As the Minister for the Environment stated in the third reading of the RM Bill it "provides a more liberal regime for developers...what people get up to is their affair...for the most part decision makers operating under the Bill's provisions will be controlling adverse effects...to limit the reasons for and focus of intervention is intended not only to achieve sustainability of natural resources, but also to facilitate matters for those who seek consents" (*Hansard* 1991 p 3016).

Where would this leave the protection and enhancement of recreation and nature conservation values on pastoral leases if the only community intervention available were through the RMA?

Application of the RMA to the high country

There is only one specific duty in the RMA to maintain and enhance public access. This is confined to the coastal marine area, lakes, and rivers (s 6(d)). As pastoral leases are confined to inland regions, lakes and rivers provide the only opportunity under the RMA for public access. The margins of these, while significant, are just one part of a very diverse range of recreational environments. What of the needs of hunters, walkers, skiers, mountaineers, mountain bikers and others whose focus is on land rather than water? There is no requirement to provide for their needs under the RMA. There might have been partial provision if "access to and along the public estate" had survived the passage of the RMA, but it did not.

In the absence of Crown intervention via leases, occupiers will have unrestrained rights to diversify into commercial recreation and tourism. This will inevitably become an exclusive right. That is unless one subscribes to the free-market nonsense that an individual's worth is measured by ability to pay.

An important part of the present leasehold regime is the retention by the Crown of a discretion to not allow commercial activities over pastoral leases. This is because lessees hold trespass rights. Commercial recreation may conflict with public recreation by excluding access and use.

The nature conservation and landscape protection component of the high country were increasingly recognised by a succession of policy developments under the former Land Settlement Board. When these policies were applied a more harmonious integration of conservation, recreation and pastoral activity resulted. Another outcome was a realisation that, where feasible, it is better to separate incompatible uses. 'Land unsuitable for grazing' and areas of high nature conservation value such as wetlands, etc., were 'retired' from grazing. Sometimes they were also reserved. A predominantly preservation approach could then apply to those areas rather than attempt to continue to be 'all things to all people' over all areas. The RMA attempts to be just that and provides no guidance as to what particular value —development, use, or protection — should apply in particular areas. In other words the preservation emphasis for natural areas is different from the purpose of the RMA.

As outlined earlier there is a pressing need for assessment of pastoral leases into at least three categories. This would be according to their predominant values, but also recognising that there is a large 'middle area' of overlapping grazing, conservation, and recreation values. This middle category will require site-specific monitoring and regulation of pastoral practices (e.g., stocking type, rates and duration, burning) if grazing is to be permitted. This is essential to ensure survival of the tussock grasslands. Regional councils would need to take over this role from the Crown, with even greater manpower and resources committed if it is to be successful. However Government and the Councils themselves have made it quite clear that this is not to be their role. They may develop policies for the high country, however even if these are specific enough to be of practical application, there will be no means of ensuring that they will be implemented on each property. It is wishful thinking to expect local 'Landcare' groups, and individual farmers with short term financial priorities, to manage native grasslands primarily for conservation. Public purposes and private purposes do not always coincide.

PANZ believes that the Land Act, and the controls available to the Crown as landlord, remain very important instruments for protecting the total public interest on pastoral lands. The Act serves and, with refinement, can better serve conservation and recreation purposes than the provisions of the RMA.

The RMA embodies unresolved and inherent conflicts of emphasis which are fundamentally different from the nature conservation and recreational imperatives for these lands.

An emphasis on the RMA's environmental bottom-lines could also result in a lowering of environmental and amenity qualities to the lowest acceptable denominator by providing a

mandate for development. The predominantly open space and natural character could therefore be lost. This is the antithesis of what protected natural areas are intended to aspire to.

Heritage Protection Authorities

Another consequence of the passing of the Resource Management Act are moves to place the management of the spectacular Shotover River catchment, near Queenstown, under the control of a district council's trading enterprise. A steering group consisting entirely of runholder, business and tourism interests is advancing plans for a Shotover Heritage Protection Authority (*ODT* 4/2/93). This would be appointed under s 188 of the Act and would assume planning and resource consent control over the valley. The Minister for the Environment has the power to appoint and revoke Heritage Protection Authorities.

PANZ has concerns that, while there is considerable merit in a heritage order, the proposal may result in control of public lands and waters passing into private hands. In this case there are particularly strong commercial interests that do not coincide with wider public interests. This is a role more befitting an elected council.

The Shotover Valley has outstanding recreational values, not being confined to those utilised by commercial entrepreneurs. The area is predominantly pastoral lease and public reserve and is of national significance. It offers a range of tramping, canoeing, and passive recreation opportunities for those who do not wish and/or cannot afford to participate in a well-developed commercial scene.

The Department of Conservation and Ministry for the Environment have welcomed the initiative by the business interests. We will endeavour to keep you posted on developments.

ACTION BOX

Please advise PANZ of any other moves to create Heritage Protection Authorities which may result in private control over public assets.

Conservation Estate

Access by plastic card?

Pressure is mounting from the tourism industry for charges for everyone to enter public conservation areas. This is seen by its proponents as the most effective way for DOC to increase its revenue to cope with increased tourism pressures.

It is however these same advocates that have unilaterally decided that 3 million visitors should be generated by the year 2,000. Government has already granted $35 million to achieve this target *but no extra funding for DOC to manage the onslaught.* Such matters have been recently discussed within the Conservation Tourism Liaison Group, comprising top executives of the tourism industry, concessionaires, and several members of the Conservation Authority.

The industry is concerned that degradation at pressure spots could "kill the goose that lays the golden egg," but seems prepared to overlook the fact that the problem areas are relatively few and are largely the result of their own activities and promotion. Recreational use over the vast majority of the conservation estate remains manageable.

The industry view is that "natural resources are under managed not over used," and by inference can never be overused. We presume that the management envisaged is the construction of more and larger heavy use facilities —that is changing the physical nature of our protected areas. This is the time-in-memorial conflict between the demands of industry and the ideals behind our national parks, etc.

There does not seem to be much enthusiasm for advocating a portion of the $1.2 billion tax-take generated by tourism last year to be added to DOC's budget-night allocation. It seems that everyone visiting the conservation estate may be forced to suffer from the excesses of the tourism industry and the irresponsible neglect of Government.

Conservation Authority member Les Hutchins has circulated a paper titled *'Is it time for the user to pay for access to New Zealand's Conservation Estate?*' While canvassing the 'Taxation/Vote Conservation' issue and expressing a preference for this option, he raises the spectre of the ubiquitous plastic card and electronic gates giving access to facilities including huts and perhaps even roadside walks. Mr Hutchins believes that a charge of $NZ100 for an entry card would not be unreasonable. He may be correct for most visitors from afar who can afford to migrate around the world visiting tourist destinations. But what about the rest of us who happen to call New Zealand home, a high proportion of whom have more modest horizons and means? Mr Hutchins expects a lively debate. PANZ suggests that there be no debate; like a similar suggestion for user-pays beaches in NSW the idea should be buried —rapidly.

ACTION BOX

Write to the Ministers of Conservation and Tourism, and the PM, asking Government to give an unequivocal assurance that freedom of public entry to conservation areas will be maintained; i.e. no entry charges.

DOC to 'foster' tourism?

The Conservation Tourism Liaison Group is also pressing for the removal of the distinction in the Conservation Act between 'tourism' and 'recreation.' DOC is currently charged with "fostering" recreation and "allowing" tourism. The Group considers that 'tourists' are also recreationalists, which is correct, but chose to confuse 'tourists' with 'tourism.' The latter is an industry with a huge potential for incongruous development and despoilation of natural areas. The recreational activities of the tourist are quite distinct from the industry that services them. However the industry believes the distinction is unfair; they want the "fostering" of tourism.

The existing wording in the Conservation Act is quite deliberate (s 6(e)) and a realistic recognition of the likely adverse impacts on the environment if tourism were to be consciously encouraged within protected natural areas. **The working balance is bad enough now with DOC neglecting recreation and becoming increasingly compliant to the demands of industry.**

Ngai Tahu Land Claim

In the last issue we addressed the Waitangi Tribunal's findings and recommendations on the Ngai Tahu land claim. We concluded that claims over South Island national parks and high country were being presented as having the force of a favourable ruling from the Tribunal behind them, when we contended that it did not.

In order to ascertain from Government what is the basis for them to be considering use of these lands as part of a settlement with Ngai Tahu, PANZ put to the Minister of Justice a series of questions in November last year. It took almost 3 months and 3 follow-up letters or faxes to obtain a substantive reply from Mr Graham.

Below is Mr Graham's reply, and our response to it —this is unavoidably long. Unlike Government we do not believe that unsubstantiated assertion is good enough. Our commentaries that follow provide the basis for our view that the Government is conducting a 'confidence trick.'

For a summary of our concerns see *'Maori land claims and 'partnership'* on pages 2 and 3.

Meanings & Names—

Kemp purchase	Canterbury and Otago
mahinga kai	places where food is procurred or produced
Murihiku	Southland
pingao	a native sand-binding sedge
pounamu	greenstone
Waihora	Lake Ellesmere
Wairewa	Lake Forsyth

Question One:

On 28 August 1992, and again on 22 October 1992, in reply to (correspondents) you stated "a number of options for settlement of the *proven* Ngai Tahu claims are currently being investigated by the Crown and Ngai Tahu negotiating teams" (our emphasis).

Would you please cite the relevant Tribunal findings and recommendations for areas subject to the Kemp and Murihiku purchases, that sanction changes to ownership, partial loss of Crown control, or co-management over areas now administered by the Department of Conservation, and pastoral leases? We find basis in the Tribunal's report for pounamu, Waihora, Wairewa, and pingao being used in settlement but none for public, and pastoral leasehold, lands in the South Island high country.

Answer:

"The Tribunal findings on the Kemp and Murihiku purchases are found mainly in chapters 8 and 10 respectively. These findings relate, *inter alia*, to inadequate reserves, failure of the Crown to exclude particular lands from sale and failure of the Crown to protect mahinga kai. As to recommendations, at chapter 24.1 the Tribunal states that it was:

> "advised by both the claimants and the Crown that they did not wish us to formulate a comprehensive set of recommendations as to the relief which should be provided by the Crown. While it is recognised that the Tribunal would wish to make recommendations on some specific matters (as we have done in respect of pounamu for example), the parties preferred that they should enter into direct negotiations with each other."

In other words, the Tribunal made specific recommendations on discrete areas of the claim, but in respect of the general claim agreed to allow the two parties to negotiate remedies."

Commentary:

This is what immediately follows the passage quoted above, but is not stated by Mr. Graham [24.1 at p 1051]—

> "These negotiations would be on the basis of the Tribunal's findings of fact and its consequential findings of breach of Treaty principles."

Two key elements of the grievances heard by the Tribunal related to the western boundaries of the Kemp and Murihiku purchases by the Crown. Ngai Tahu claimed that the western boundaries were the foothills above the Canterbury Plains, and the Wairau River in Fiordland. In other words they claimed that all the Canterbury and Otago high country now occupied by pastoral leases, Arthurs Pass, Mount Cook, Mount Aspiring and Fiordland national parks, etc., had never been sold to the Crown.

During the hearing of the claim the Crown's counsel dismissed these claims as "myths" and "without any factual foundation" (*The Press* 1/7/88).

The Tribunal's findings on these matters are recorded in its report—

> **Murihiku western boundary** [2.6 at p 104]
> "After weighing all the evidence the Tribunal found that the land west of the Wairau was not wrongfully included in the sale. Accordingly the claimants' grievance no 6 was not sustained."
> **Kemp western boundary** [8.11.5 at P 516-517]
> "The claim of Ngai Tahu regarding the western boundary was not dismissed lightly. However after a full, frank and lengthy discussion, the Tribunal finds that it does not uphold the claimants grievance no 4(a), that on the matter of boundaries the Crown enforced an interpretation which had not been agreed to by Ngai Tahu in respect of the western boundary."

There was consideration of the matter in chapter 2.4 at pp 53, 62, 63, 65, chapter 2.6 at p 102, and chapter 10.6.18 at pp 632-633. The latter reference repeated the Tribunal's finding in regard to the land west of the Wairau River.

PANZ can find no basis in the Tribunal's findings to support the use of the above lands for settlement of 'grievances' that have been disallowed. Where other grievances, as listed in Mr. Graham's reply, were upheld these were for distinctly different areas or resources.

It is critical to be aware of the function of the Tribunal. Both Ngai Tahu and the Crown submitted to its jurisdiction and did not first settle on an alternative of direct negotiation. This alternative was open to both parties. Instead they chose to submit their cases for determination by the Tribunal. Negotiations *then* followed.

Tribunal member the Right Reverend Manuhuia Bennett has stated: "Ngai Tahu claims before the Waitangi Tribunal were concerned *with finding out whether land had been bought legally or not*" (*The Dominion* 30/5/89). His comment is reinforced by the Tribunal's comments on its jurisdiction—

> [1.7 at p 27]
> "The role of the Tribunal is to determine whether, and to what extent, the Crown has acted in breach of Treaty

principles and the extent to which the claimants have been detrimentally affected by any such breaches. It is then left to the parties to negotiate a settlement of any *proven* grievance" (our emphasis).

[4.4.2 at p 222]
"For the purposes of the Act [Treaty of Waitangi Act 1975], the Tribunal has exclusive authority both to determine the meaning and effect of the Treaty as embodied in the two texts, and to decide issues raised by the differences between them."

[17.7.2 at p 917]
"We agree with the view of the learned chief judge [Durie] that the statutory authority of the Waitangi Tribunal is to determine whether any act or omission of the Crown is inconsistent with Treaty principles. That is our guiding jurisdiction."

Additionally the Tribunal "shall cause a sealed copy of its findings and recommendation (if any) with regard to any claim to be served" on the claimant and relevant Ministers of the Crown (s 6(5) Treaty of Waitangi Act 1975). The Tribunal has a duty to reach findings, and a discretion to make recommendations.

The Tribunal accepted both parties' requests not to come down with recommendations, except in some specific areas where grievances were upheld.

Further, under the Tribunal's recommendations, it went on to record [25.1.at pp 1061-1065]—

"As stated earlier in this report *the Tribunal at the commencement of the claim was urged by both the claimants and the Crown to make findings on the issues and to determine whether there had been breaches of any Treaty principles.* We were asked to defer the question of remedies. We agreed to that course for two reasons. First, it obviated possible waste of time in both parties addressing remedies prior to the Tribunal establishing whether breaches had occurred. Secondly, and more importantly, it gave the parties an opportunity *after having received the Tribunal's findings*, to negotiate a settlement" (our emphasis).

A memorandum to the Cabinet Committee on Treaty of Waitangi Issues, at 1.4.2, more succinctly records the Tribunal's powers: "the power to make *findings of fact* and interpretation and related recommendations" (our emphasis).

In respect of Mr. Graham's assertion in his reply that the Tribunal allowed the two parties to negotiate remedies in respect of a 'general' claim, this is incorrect. While Ngai Tahu lodged a 'general' claim on 26 August 1986, the Tribunal required Ngai Tahu on 24 April 1987 "to file a more particular statement of grievances, with specific details of the acts and omissions of the Crown of which the claimants complained." An amended claim of 2 June 1987 set out these particulars [1.3.2 at p 4]. "As the hearing progressed the tribunal requested Ngai Tahu to file a list of grievances grouped under Ngai Tahu's 'Nine Tall Trees.' In all a total of 73 alleged wrongful acts or omissions of the Crown were claimed to be inconsistent with the principles of the Treaty of Waitangi" [1.3.4 at p 8].

Ngai Tahu themselves limited possible remedies by stating in their amended claim of 2 June 1987— "any lands allocated to the claimants should be representative of the lost land in both character and geographic distribution" (Appendix 3.4 at p 1110).

In any event the Tribunal directed under 24.1 that the negotiations would be on the basis of the Tribunal's *findings of fact.* This precludes negotiating 'remedies' involving lands or resources where claims were not sustained. The 'discrete' areas that recommendations were made on had no bearing on high country pastoral leases or national parks.

In its report the Tribunal touched on other matters not directly related to Treaty breaches and its jurisdiction, for instance [25.1]—

"The Tribunal also makes a number of other recommendations which although not directly arising from or remedying breaches of the Treaty nevertheless flow from the Tribunal's inquiry and need to be addressed by the Crown."

Under its 'Remedies' chapter the Tribunal commented on the place of **pastoral leases** in any settlement [24.5.1 at p 1054]—

"In seeking to re-establish their rangatiratanga Ngai Tahu expect to have land returned to them. The Tribunal agrees with this view. There is adequate land held by the Crown and state-owned enterprises to enable land settlement to feature in any remedy. Ngai Tahu made clear, for instance, their interest in land held under pastoral leases from the Crown."

Further on under 24.5.2 reference is made to **national parks**—

"A number of the South Island national parks include mountains, lakes and landscape of particular spiritual value to Ngai Tahu. They are the repository of much Ngai Tahu mythology and tradition. Restoration of their rangatiratanga would seem unfulfilled were *the return of some at least of these treasured natural features denied to Ngai Tahu*" (our emphasis).

Pastoral lease and national park lands are clearly on the Ngai Tahu wish-list. However it is now an established fact that the Tribunal disallowed their claims over them. Ngai Tahu may *wish* to have such lands returned to them but they cannot *expect this as of right* on the basis of the Tribunal's findings.

National parks, etc., are lands of the Crown *held under trust by the Crown in public ownership for public benefit.* The flow-on consequence of the Tribunal's determinations is that they must continue to be so held. As Mr. Graham has stated:

"Treaty claims are against the Crown so that it is for the Crown itself to negotiate settlements of them. However, the Crown would want to ensure that any transfer to Maori of any Crown-owned asset would not directly prejudice any third party, including the New Zealand public, since such further injustice would also be in breach of the Treaty" (Minister of Justice to NZ Fish & Game Council 17/8/92).

The Treaty is about a relationship between two parties. An unjustified granting of rights to one is at the expense of the other. To maintain a just balance of rights and obligations between the parties, the Tribunal's findings must be upheld.

In regard to re-establishing Ngai Tahu rangatiratanga the Tribunal appears to have gone beyond its own findings and jurisdiction in viewing pastoral leases and national parks as part of a settlement [24.5.1 & 24.5.2 above]. The Tribunal found that loss of rangatiratanga was confined to lack of reserves, mahinga kai, and eeling rights at Wairewa [2.12 at p 163-165]—

"In respect of mahinga kai the Tribunal found as follows:

(a) (i) that the Crown failed to make specific reserves to preserve and protect Ngai Tahu's mahinga kai; and (ii) that the Crown failed to provide sufficient reserves to allow Ngai Tahu to participate in the developing economy.
As a result Ngai Tahu were deprived of their rangatiratanga guaranteed to them by article 2 of the Treaty.

(e) that the Crown failed to protect Ngai Tahu rangatiratanga under article 2 in that it granted eeling rights at Wairewa to Maori instead of to Ngai Tahu."

The reserves (for agricultural, pastoral or dairy farming), and mahinga kai sought by Ngai Tahu were well outside the high country in question. Therefore the Tribunal's comments under 24.5 are not, and cannot be, directionary on the Crown. In respect of the Tribunal's observation that restoration of rangatiratanga would seem unfulfilled were the return of some at least of these treasured natural features in national parks *denied* to Ngai Tahu, this contradicts their own findings that such lands were legally purchased by the Crown.

It is only findings of fact, and recommendations based on such findings, that the Crown is obliged to consider.

"Honesty of purpose calls for an honest effort to ascertain the facts and reach an honest conclusion." Richardson J in *New Zealand Maori Council v Attorney-General.* [1987] 1 NZLR at p 682

Question Two:

We note that the Treaty of Waitangi Act 1975 gives the Tribunal exclusive authority to determine the meaning and effect of the Treaty and to determine if the Crown has acted in breach of Treaty principles. **If Government believes it has authority to independently determine the scope of Treaty breaches by the Crown would you please cite that authority.**

Answer:
"In the case of the Ngai Tahu claim, the Crown has no need to independently determine the scope of Treaty breaches as the Tribunal has already detailed this in the Ngai Tahu report."

Commentary:
The Minister has side-stepped the question but confirms that *the Crown's position relies on the detailed determinations of the Tribunal.*

Question Three:

The Tribunal consistently concluded that the purpose of reservations were so that Ngai Tahu could develop side by side, and on at least an equal basis with new settlers, in agricultural, pastoral or dairy farming. The Tribunal also found that the Crown had a duty to protect *principal* food resource areas (our emphasis), as opposed to all possible areas. National parks, pastoral leases, and high country conservation lands were not principal mahinga kai and do not coincide with these considerations or with what Ngai Tahu asked to have reserved to them at the time of the land transactions. **Please advise if Government differs from our reading of the Tribunal's report in this regard.**

Answer:
"The Crown accepts in principle that insufficient reserves were set aside, that it failed to exclude certain lands from sale and that it thereby failed to protect mahinga kai. The Tribunal states at chapter 17.5.2 that:

> "it was not only necessary for the Crown to protect the principal food resources areas, it was also the duty of the Crown to provide the tribe with extensive land so that it could adapt itself to the new pastoral and agricultural economy."

If the Crown were to limit itself to assisting the tribe to adapt to pastoralism and agriculture, upon which the entire economy of this country is no longer based, it could be in danger of breaching the Treaty. The tribe would once again be left without a realistic economic base. The Crown must come up with creative remedies that will not compound past Treaty breaches, nor create others. In an effort to do this, the Crown is attempting to put the tribe in a position where it can take care of its own people. However, as well as an economic base, the tribe has lost much of its mana because of the Crown's past actions. It is now up to the Crown to assist the tribe to regain its mana by restoring some form of rangatiratanga over the land. It is this desire which is behind the consideration of sharing title to conservation lands."

Commentary:
The Minister's reply does not contest the PANZ interpretation of the report in regard to principal food areas and desired reserves being outside present-day national parks, pastoral leases, and high country conservation lands.

The entire economy of New Zealand in 1848-53, when the Kemp and Murihiku purchases were negotiated, was not confined to pastoralism and agriculture. However it was reserves for these purposes that Ngai Tahu wanted set aside for them. Inclusion of public conservation lands in a settlement to provide the tribe with a "realistic economic base" is a base concern of many in the conservation and recreation movements. This is causing widespread scepticism at assurances that there is nothing to fear.

The contradictions of both government and Tribunal, while determining that Ngai Tahu had suffered "grievous economic loss," and advocating the return of non-economic conservation lands [24.5.5] to remedy that loss, raises the spectre of new forms of economic activity. These may be inimical to the preservation and public use purposes of these areas. The prospect is of entry charges, tourism developments (e.g. Ngai Tahu already signed into joint venture for a Greenstone Valley monorail), and other developments that may directly conflict with continued free public entry and enjoyment. Mixed messages about purposes and intent from both Ngai Tahu representatives and the Government, as well illustrated by the Minister's reply, are fuelling this concern. Is economic development *as well as* restoration of 'mana' and 'rangatiratanga' intended? The latter considerations are invariably tied by Ngai Tahu and the Government to the return of public lands rather than state-owned enterprise lands. A sceptic could easily believe that *mana* and *rangatiratanga* cannot be restored by transferring title to highly productive farms and forests!

And there is the question of what is meant by ***mana*** and ***rangatiratanga***? Some definitions:

Mana— authority, control, influence, prestige, power, psychic force.

Rangatiratanga (also *te tino rangatiratanga*)—

> chieftainship: tribal control of tribal resources. Includes the holding of resources on a communal rather than individual basis.

(Source: *Environmental Management and the Principles of the Treaty of Waitangi*, Parliamentary Commissioner for the Environment, 1988):

The Second Article of the Treaty guarantees Maori unqualified exercise of their **rangatiratanga** over their lands, villages and all other treasures (translation of Maori version).

The *Principles for Crown Action on the Treaty of Waitangi*, Department of Justice 1989, sets out the Crown's interpretation of 'The Rangatiratanga Principle/The Principle of Self Management' as —

> "The Second Article of the Treaty guarantees to iwi Maori the control and enjoyment of those resources and taonga *which it is their wish to retain*. The preservation of a resource base, restoration of iwi self management, and the active protection of taonga, both material and cultural, are necessary elements of the Crown's policy of recognising rangatiratanga" (our emphasis).

The Tribunal in its Ngai Tahu report observes [4.6.6 at p 231]

> "In the Te Atiawa Report (1983) the Tribunal stressed that rangatiratanga and mana are inextricably related, and that rangatiratanga denotes the mana not only to possess what one owns but, and we emphasise this, to manage and control it in accordance with the preferences of the owner. The Tribunal thought the Maori text would have conveyed to Maori people that, amongst other things, they were to be protected not only in the possession of their fishing grounds (the subject matter of the Te Atiawa claim), but in the mana to control them in accordance with their own customs and having regard to their own cultural preferences. Clearly the same understanding would have been held in relation to land. We continue to believe that this is the proper interpretation to be given to the Treaty, because the Maori text is clearly persuasive in advancing this view, and because the English text, referring to "full exclusive and undisturbed possession" also permits it."

Implications arising from application of the rangatiratanga principle become apparent from *Taking Into Account the Principles of the Treaty of Waitangi*, Ministry for the Environment, 1993—

> "The use of the term "rangatiratanga" in the context of the Treaty denotes an institutional authority to control the exercise of a range of user rights in resources, including conditions of access, use and conservation management. Rangatiratanga incorporates the right to make, alter and enforce decisions pertaining to how a resource is to be used and managed, and by whom."
>
> "In speaking with consent authorities Maori speak of their interest in natural resources as a right of ownership of the resources. Although generally understood to mean legal title, the English concept of "ownership" encompasses rights of possession, use, and management of natural resources and the right to derive benefits of capital and income from those resources. This range of user rights is also characteristic of rangatiratanga."

Translated into application over public lands, *'rangatiratanga'* means replacement by one-sector ownership, control, use and benefit according to their own preferences. By definition, other philosophies of management and users are liable to be excluded.

This is completely at odds with the founding principles of national parks and other protected areas.

PANZ believes that in cases where the Tribunal may find that parts of the public conservation estate were unlawfully taken from Maori, there should be consideration of the use of other assets, as well as return of the land in question, to arrive at equitable settlements. In the case of the Ngai Tahu land claim however this question does not arise—the Tribunal's findings of lawful purchase by the Crown means that Ngai Tahu did not wish to retain these particular lands. Therefore there is no grievance under Article Two of the Treaty for the Crown to answer.

PANZ is aware of the view of the Tribunal, at 4.6.6 at p 231

> "Generations of Ngai Tahu have suffered as a consequence of Crown Treaty breaches. Virtually all the valuable land has long since passed into private hands. Irreparable damage has been done to Ngai Tahu mahinga kai resources. And so a fair, just and practical settlement is likely to be based on a mixed set of remedies which reflect not only the nature and extent of the grievances but present day realities."

The question of *which* Crown resources can and should be used must be the central issue. The Tribunal's findings, and considerations of the Crown's legal responsibilities to the whole community ("not to create other Treaty breaches"), should narrow down the choice of assets to those of the state-owned enterprises, cash, or both.

Question Four:

Please advise on what basis national parks, etc., and pastoral leases appear to be subject to preferential consideration for settlement of Ngai Tahu grievances ahead of use of SOE holdings (e.g., Landcorp, Forestcorp) for such purposes.

Answer:

"National parks and pastoral leases are not subject to preferential consideration for settlement of Ngai Tahu's claim. They are merely two of the options that have been discussed by the parties. Other options, including SOEs, are also being considered."

Commentary:

Mr. Graham replied to us on 19 February 1993. On 23 February Government introduced the **Treaty of Waitangi Amendment Bill**. This provides that the Waitangi Tribunal shall not recommend to the Crown that it "acquire ownership of any land or interest in land held by any person."

'Person' is defined by the Acts Interpretation Act 1924 (s 4)—"includes a corporation sole, and also a body of persons, whether corporate or unincorporate."

It appears that SOEs, being corporations, are within the meaning of 'person.' In that case the Tribunal will only be able to recommend the return of public lands, the conservation estate, for settlement of claims. **The Bill may signal Government's intentions for settlement with Ngai Tahu.**

Question Five:

We believe that, unlike SOE assets, national parks, etc., are not government properties able to be divested by government decision alone. The conservation estate *is held in trust* by the government of the day for the benefit of present and future generations (C.f. s 4 National Parks Act 1980). The whole scheme of that Act is designed to maintain such areas as public property as well as retain full Crown jurisdiction and political accountability for management. **On what basis of statutory or other authority have you and other Ministers of the Crown publicly stated that 'title' or 'joint-title' are being considered for conveyance to Ngai Tahu?**

Answer:

"Section 4 of the Conservation Act 1987 states that that Act shall be so interpreted and administered as to give effect to the principles of the Treaty. As you are aware neither joint title nor co-management will affect existing public access to, or conservation values over, the conservation estate. However, the Government recognises the legitimate right of all New Zealanders to participate in conservation decisions, and so has undertaken that if any alterations in the management of our conservation estate were envisaged to discuss this with conservation organisations."

Commentary:

There are no provisions for 'joint title' under the Conservation Act. There are provisions under s 60F for certificates of title in the name of the Queen. There are no equivalent provisions for national parks and reserves. It appears that 'joint title' could only be created by legislative amendment.

It may be possible to transfer title in total from the Queen to Ngai Tahu once a title is created in her name. **In the view of PANZ it is both unneccessary and highly dangerous to have certificates of title issued over public lands.** Such lands do not require titles. Only alienated or private lands need titles to establish who the true owner is. In the absence of such proof the Crown enjoys 'eminent domain' over all lands.

Disposal of public lands requires more than discusion with *selected* 'conservation groups.' The Minister's statement is hardly recognition of "the legitimate right of all New Zealanders to participate in (so called) conservation decisions."

ACTION BOX

Write to the Prime Minister/see your MP. Ask them to stop transfers of these and other public lands which are unsupported by Waitangi Tribunal *findings of fact*.

Mount Hikurangi

In the last issue we commented on the vesting of ownership of approximately 5000ha of the Raukumara Forest Park in the East Cape to Ngati Porou. This became Maori freehold. In return a conservation covenant over that area and part of the adjoining Pakihiroa Station was entered into.

The Hikurangi deal did not arise out of a claim before the Waitangi Tribunal but was entered into to "give effect to the principles of the Treaty of Waitangi" in terms of s 4 of the Conservation Act.

The Maori Land Court agreed to the vesting of ownership in January 1991. DOC officer Andy Chapman was reported as saying in *The Gisborne Herald* on 6/4/91 —"the covenant has received the Maori Land Court stamp meaning it is now a legal document. It was an agreement between Ngati Porou runanga as representatives of their tribe and the Department of Conservation representing the Crown."

The following is the text from part of the official pamphlet heralding this as a 'legacy to New Zealand'—

Message from the Minister of Conservation

" 'Hikurangi te maunga, Waiapu te awa, Ngati Porou te iwi.' (Hikurangi is the mountain, Waiapu is the river, Ngati Porou are the people).

The revestment of Mt Hikurangi with the people of Ngati Porou, heralds a most significant occasion in the development of New Zealand's heritage. As the first place in the southern hemisphere to see the sun, the mountain has a special importance for all New Zealanders, but particularly so for Ngati Porou for whom Mt Hikurangi represents their unifying spiritual and cultural identity.

This special relationship has long been given life through the waiata, haka, whakatauki and karakia of Ngati Porou. Now the revestment gives life once again to the mana of the mountain as it is returned to its rightful place with the tangata whenua.

Whilst the cultural and spiritual significance to the people of Ngati Porou cannot be understated, a clear signal has been given to all peoples of New Zealand, that it was the spirit of partnership between Ngati Porou and the Crown, through the Department of Conservation, Te Papa Atawhai, which allowed this to happen.

This partnership resulted in the signing of an agreement which enabled the mana of Mt Hikurangi, and its spiritual and cultural integrity, to be revested with the people of Ngati Porou through return of the mountains ownership to them.

The agreement also provided for the outstanding ecological values of the area to be fully protected in perpetuity, through the placement of a conservation covenant over the entire mountain, under the joint management of the Department of Conservation and Te Runanga O Ngati Porou.

The right of access to experience Mt Hikurangi's special values, has been secured for all future generations of New Zealanders, through the establishment of a walkway onto its slopes.

The agreement that has been reached exemplifies the tremendous value of using honest and open partnership as a means to resolve outstanding issues and concerns, as a way in which all parties involved can benefit, and which truly embodies all the essential ~~principals~~ [principles] of the Treaty of Waitangi. This perhaps, is Mt Hikurangi's legacy to New Zealand.

The Honourable Denis Marshall Minister of Conservation"

Mt Hikurangi — *The Agreement*

"The terms of the Agreement reached between Te Runanga O Te Ngati Porou and the Department of Conservation with regard to the future ownership and management of Mt Hikurangi are:

- The Crown will transfer ownership of Hikurangi to Ngati Porou.
- Ngati Porou will enter into a conservation covenant with the Crown in perpetuity over the mountain (excluding the farmland), with the key objectives of:
  - — Protecting the ecological values of Mt Hikurangi.
  - — Enhancing the cultural and spiritual integrity and values

of Hikurangi.
  — Embodying the principles of the Treaty of Waitangi in a practical working partnership between the Crown and the iwi.
- The public will have a free right of foot access to the mountain secured by an easement under the New Zealand Walkways Act 1990.
- A joint management committee will oversee management of the covenant area and be responsible for the preparation of a management plan. The management committee will comprise of three representatives from Ngati Porou and three from the Department of Conservation. Decisions of the Committee will be made by consensus.
- Protection of wahi tapu will be the responsibility of Ngati Porou.
- The authorisation of any commercial operations will be the responsibility of Ngati Porou, subject to consultation with the Department of Conservation to ensure the protection of conservation values.
- The Department of Conservation will be responsible for wild animal control and, primarily, for weed control. Any net income from commercial hunting will go to Ngati Porou.
- The Minister of Conservation will use his best endeavours to have the area closed to mining.
- The Department of Conservation accepts liability for payment of any rates levied on the covenant area and will share maintenance costs for boundary fencing between the covenant and Pakihiroa Station.

Maori Land Court Judge, James Rota approved the revestment of ownership of Mt Hikurangi in Te Runanga O Ngati Porou as trustees in perpetuity for their iwi, contingent upon the terms of the above agreement."

Note: In addition to the Walkway provision the conservation covenant provides for the public's recreational use and enjoyment of Hikurangi only to the extent of being consistent with the above 'key objectives.'

It appears that the agreement between the Crown and Ngati Porou has 'fallen over' (see Public Notice).

In view of what appears to be a clear breach of the terms of the agreement, PANZ asked the Regional Conservator of DOC what official efforts were made to ensure compliance with the deed. He replied that although a "legally binding agreement" it "has not yet been fully implemented." Access is "at the pleasure of Ngati Porou."

The Hikurangi model fits with the kind of arrangements that Doug Graham and Denis Marshall have been talking about for Ngai Tahu and other settlements. This is an early indication of the fallacy behind Government assurances that there is nothing to fear.

The Gisborne Herald, Thursday, December 31, 1992—

Public Notices

NGATI POROU FESTIVAL JANUARY 1993

Te Runanga o Ngati Porou advises that:

1. PUBLIC ACCESS to Hikurangi Mountain through the Pakihiroa Station track is closed from Tuesday, December 29, 1992 to Thursday, January 7, 1993 during the period of the Ngati Porou Festival.
2. All inquiries for access to:

Vianney Douglas
C2000 Co-ordinator
Te Runanga o Ngati Porou
Main Road, P. O. Box 226
Ruatoria

Phone: (06) 864 8121, Fax: (06) 864 8115

APIRANA MAHUIKA, Chairman
Te Runanga o Ngati Porou

Those who have been expressing concern about the wisdom of the Government's approach have had to suffer put-downs such as this—

> "Some normally sensible and progressive conservationists seemed in danger of loosing their perspective over this issue and had departed from their normal highly analytical and constructive approach to launch public attacks which distanced them even further from Maori claimants.
>
> A few conservationists seemed to prefer confrontational tactics to the politics of quiet persuasion, getting alongside (Ngai Tahu) and discussing differences in a rational manner. Such conservationists were in danger of being seen as the last bastion of conservatism."
> *Denis Marshall, Conservation Review No 13 September 1992*

ACTION BOX

Write to the Ministers of Conservation and Justice and ask what actions they will take, either —

- to enforce the terms of the agreement between the Crown and Ngati Porou, that is the immediate reopening of public access, or
- to regain public ownership and control over Mt Hikurangi.

Election '93

PANZ is currently formulating policies to discuss with political parties. We hope that they will address at least four big issues of concern to the recreational electorate. These are—

- The Queen's Chain, rivers, lakes
- The public conservation and recreation estate
- Public Roads
- Pastoral leases

We would welcome your comments on the nature and scope of policies that should be sought — please respond as soon as possible.

PANZ also intends polling each party with a detailed questionaire. The results will be published to assist you in your electoral decision-making.

Access News

Please send clippings (with date and source) to PANZ

Waiheke Island troubles

New Zealand Herald, January 11, 1993—

"...Loop Road is part of the tourist route running around the Hauraki Gulf island. The section that runs through Mr. Spencer's farm contains one of the most popular spots, the historic gun emplacements of Stony Batter.

Loop Road was built during the 1970s with the co-operation of local landowners. It was intended to be vested in public ownership but this process was not completed when Mr. Spencer bought the 650ha surrounding Stony Batter in 1980.

Discussions began amicably but became heated as Mr. Spencer made changes to the road. In 1986 he buried the road along Man O'War Bay, south of Stony Batter, and built a new road further inland away from his house. The then Waiheke County Council rebuilt the old road with a bulldozer.

The Auckland City Council, which has taken over the administration of the island, has challenged Mr. Spencer's roadblock with an appeal to the Planning Tribunal. The council claims that Mr. Spencer does not have the right to block the road. A separate High Court decision is expected to settle the ownership of the road."

New Zealand Herald, January 13, 1993—

Police warn public to leave roadblock

"Police legal experts say Waiheke Islanders do not have the right to try to unblock a disputed road near Man O'War Bay.

Inspector Kevin Glubb, of the Auckland regional police legal section, said yesterday that residents who attempted to dig away a large earth mound cutting off Loop Road ran the risk of being arrested for trespass.

Land title searches indicated that the millionaire businessman and landowner Mr. John Spencer has acted within the law in bulldozing the mound to prevent vehicular access.

"From the documentation, we believe that the land in question belongs to the company registered on the title, and the owner therefore had rights in relation to that land." On that basis, Mr. Spencer would be entitled to lay a complaint of trespass against protesters who took to the blockade with shovels and spades. "If the protesters are determined to remove the mound then we may be called in," said Mr. Glubb.

However, an easement governing pedestrian access meant members of the public could walk along the road to reach the historic Stony Batter gun emplacements and other crown land. The easement, granted in 1984, made no provision for vehicles.

But in spite of the police legal opinion, some aggrieved Waiheke residents have not ruled out the possibility of further efforts to clear the road.

One resident, Mr. Chris Brady, said last night: "There are some angry people on the island who may well want to try again to dig up the mound."

A "big dig" last weekend resulted in one man being arrested for allegedly driving his four-wheel-drive vehicle over the levelled mound.

The blockade was bulldozed back to its original size on Sunday.

Residents will converge on the mound at Cactus Bay this Saturday and walk to Man O'War Bay for a picnic and family activities.

Mr. Brady said several hundred people were likely to take part in the "great Waiheke land march," intended to "reclaim" the controversial road and bring its importance to the attention of as many islanders as possible."

Otago Daily Times, January 18, 1993

Protesters arrested

"Two men were arrested on Saturday during a good-natured protest march on Waiheke Island, near Auckland.

The two residents were trying to remove an earth mound from a road near Man O'War Bay. Police warned the pair several times before they were arrested and charged with trespass. They will appear in the Auckland District Court today.

The mound had been bulldozed into place in September on the orders of multi-millionaire businessman Mr. John Spencer, who owns the surrounding farmland."

Kokako Road— 'Bridge to Nowhere' country

Ruapehu Press, November 24, 1992—

"...In the October issue of the *NZ Wilderness Magazine* Mr. John Flemming of Rotorua...wrote a letter to the editor complaining that Kokako Road...had been blocked by a local deer farmer's fence.

The owner of the farm is Gary Rawnsley, who operates Ruatiti Wilderness a wildlife safari park which is situated behind Raurimu.

Mr. Shaw (a Taumarunui Tramping Club member and Ruapehu District Councillor) said Mr. Rawnsley had constructed a small gate in the deer fence so trampers could get through and the only time he has refused permission to the tramping club is when he has a hunting party in...

...However, Ruapehu District Council Technical Services Director Bruce Dobson, said...that strictly speaking it is illegal to fence off a public road but hundreds of farmers had done it. "The issue is if people want to gain access. I have had correspondence from tramping clubs all around the country about this road. The Council has written to his solicitor about this and has pointed out Mr. Rawnsley has to get permission from the council to build the fence and he must have decent access through it. The gate he has installed is too small."

Although people can gain access through the fence, at the other end there is a bridge built by the former Waimarino Council. Mr. Rawnsley has produced a plan which shows the bridge is not on the legal road. But Mr. Dobson said a surveyor had looked at the plan and had said it would not stand up in court..."

Poronui Station

Mr. Simon Dickie has applied to the Taupo District Council to operate tourist accommodation cabins on Poronui Station, near the Taharua River tributary of the Mohaka. The accommodation is for overseas visitors undertaking a variety of activities such as 'working farm environment, horseriding, wilderness hiking, angling, hunting.'

The stream does not have a Queen's Chain along either bank but public road access to the stream is available.

In response to concern over exclusive fishing rights PANZ made a submission to the Council asking for esplanade reserves be laid off as a condition of approval—Council declined this, as well as their staff recommendation for improved road access.

Kaufmann's Streamborn Fly Fishing Supplies 1993 Edition (USA)—

Poronui Ranch

"This fishing camp is owned and operated by Simon Dickie and is located on 20,000 acres of private ranch and wilderness lands near Taupo in the North Island. Over 25 miles of private water overs sightfishing for rainbow or browns averaging 4 pounds...These ranch waters are reputed to harbor the largest concentration of trout in the North Island."

Otekaieke Pack Track

Otago Daily Times, December 4, 1992—

Disputed access stops horse treks

"A dispute over an historic "paper road" originally used by gold miners is causing strife in the Otekaieke community of the Waitaki Valley.

Mr. Terry King hoped this month to start horse treks from the Campbell Park homestead beside the Otekaieke River over to the Danseys Pass Hotel, using roads either formed or marked on cadastral maps.

However, two farm owners in the area, Mr. Mike Bayley, of Otekaieke Station, and Mr. Jess Stringer, of Kenmore, refused access on the grounds they hold freehold title over the land and they wished to have some control over commercial and leisure operations because of the effect these could have on their properties and management.

The dispute has caused tension between the two groups. Mr. King has been threatened with legal action, including a complaint of malicious damage for cutting a fence and installing a Taranaki gate, and he in turn has laid a complaint to gain access.

Mr. King wanted to use part of the formed and unformed Special School Road and the Otekaieke Bridle path, both of which are marked on Lands and Survey cadastral maps, to offer horse treks for tourists.

He also planned to use part of the Queen's Chain alongside the Otekaieke River. The Queen's Chain is a statutory requirement that guarantees public access along most rivers in New Zealand.

However, at least four fences on farm properties blocked access along the paper road, in some cases reaching as far as the river banks and bluffs to prevent access along the route for horses, he said.

The three-day horse treks would follow an historic route used by goldminers to get to and from the Danseys Pass and the old Kyeburn gold diggings.

He wrote to Mr. Bayley and Mr. Stringer several times, but had only one reply which was to refuse access for horse treks.

Mr. King was determined not to let the issue rest because, he said, there was an important point at stake — public access to the Queen's Chain and legal roads.

"It is beautiful country with some quite spectacular scenery, but the public cannot get access."

Yesterday he took action under the 1981 Summary Proceedings Act, filing a complaint with the police that the farmers were obstructing a public way.

The Oamaru police senior sergeant, Mr. Max Moore, said that as far as the police were concerned the issue was a civil matter.

Neither Mr. Bayley nor Mr. Stringer wanted to comment on the situation."

The Timaru Herald, December 5, 1992—

Row could set legal precedent in NZ

"A row over access to public lands at Otekaieke in the Waitaki Valley has national implications, according to Bruce Mason, spokesman for Public Access New Zealand.

Mr. Mason said yesterday from Dunedin that the row could establish legal precedent if it got to court. To the best of his knowledge, an access case where a member of the public removed a barrier across marginal land alongside a river (the Queen's Chain) had not been heard before in New Zealand.

"Members of the public have removed barriers across paper roads, and the law has been firmly on their side but, I don't think we have had a case involving a barrier across the Queen's Chain."

Mr. Mason said rights of access were being regularly challenged in New Zealand, so the result of the Otekaieke row could have important implications...

...Oamaru police senior sergeant Max Moore has instructed his staff not to get involved. He claimed the argument between Mr. King and Messrs. Bayley and Stringer, was a civil case.

The police action has been strongly criticised by Mr. Mason.

"The police, under the Summary Offences Act and the Crimes Act, have jurisdiction over all lands and public places. Marginal strips and paper roads are public places and for the police to refuse to act on a complaint of an unlawful barrier across those lands is a dereliction of duty," he said.

Oamaru Department of Conservation officer Dave Houston, said DOC was of the opinion that the disputed land was public so access could not be denied..."

Otago Peninsula

Dunedin Star Weekender, January 24, 1993—

Walking tracks completed

"A huge effort has been put in over the past month by friends and members of the Otago Peninsula Walkers group to complete two new tracks on the Peninsula.

A final working party effort this past week has completed steps on the Bacon St extension — a walking track from Highcliff Rd to Hoopers Inlet. Together with Ridge Rd to Sandfly Bay track completed late last year, it is now possible to walk from Sandfly Bay on one side of the Peninsula to Broad Bay on the other side, said Bruce Mason, OPW group convener. Mr Mason estimated that over 40 person days of work had been invested in the tracks over the past month. Quite a number of people have been involved including help one day by city Councillor Sukhi Turner, he said.

Approval to develop the two tracks was granted by the Dunedin City Council in June 1992. Access to and development of these and other unformed public roads on private property have been the cause of on-going disputes between the OPW and Peninsula landowners."

Notes: Public roads are not *on* private property.
The OPW has successfully developed 12 walking tracks over unformed public roads during the last 2 years, greatly enhancing walking opportunities in Dunedin.