Marshall welshes on 'Queen's Chain'

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Challenges and dangers in the high country

By Brian Turner

FROM TIME TO TIME successive governments have looked to revise the 1948 Land Act which is the main instrument for controlling and managing what happens in that great swathe of New Zealand known as the high country. For reasons both contentious and mysterious, but typical of the beast known as "the political process", and because of the political clout of rural—especially farming—New Zealand, most governments have shied away from high country tenure review. But now things seem to be moving again, and at racing speed. Why?

On the one hand it appears that rabbits, hieracium, and ideologues who wish to privatise just about everything, are behind moves to freehold some of New Zealand's finest open country landscapes and natural grassland ecosystems.

On the other there are those who see a review of the Land Act as opening the way for the creation of a network of high country conservation parks and reserves. It could also enable nature conservation and public access to be two of the objectives for the management of pastoral leases.

To large numbers of people, especially those who live in the South Island, mention the words high country and you arouse feelings which go right to the heart of their sense of identity, their sense of what is uniquely New Zealand. The mountains, rivers and valleys, and the tussock grasslands have a significance for us similar in importance to the pampas and prairies of the Americas.

Over the years, high country lessees have developed a deep sense of belonging; they have both a financial and an emotional attachment to place. To all intents and purposes they regard themselves as owners not tenants. It's easy to understand how this has happened. The fact that they have, in the main, paid peppercorn rentals for the privilege of occupying these lands seems only to have enhanced rather than lessened feelings of ownership.

To people like me, a regular visitor to the high country since the 1950s, and thousands of others who go there to tramp, climb, ski, hunt, fish, sightsee and so on—there is an extremely wide range of public conservation and recreational interests. Lessees are stewards of lands and resources that rightly belong to us all irrespective of rank or station, of ethnic origin or religious creed.

Some lessees argue that the remaining conservation values are proof that private interests can and do protect natural values. In some cases this is true. But in the main it is closer to the truth to say that where such values do remain, in many cases it is in spite, rather than because, of farming activities.

All farmers today claim to be conservationists. It is unpolitic to say otherwise. Yet the reality is that most farmers don't adopt a conservation practice unless they can see some productive gain in it for themselves.

The Department of Conservation is acutely sensitive to criticism that it is too hard line, not flexible enough, wants to "lock everything up", and is a poor neighbour. Senior staff often say, with curious logic, that the fact that they often find themselves a little at odds with both "developers" as well as conservationists and public recreational groups is proof that they must be getting it right. In my view DOC is silly to think that it can be all things to all people; its priorities must be with conservation and recreational needs.

And then there's the question of adequate funding to do the job that DOC is charged with. Often DOC's fiercest critics are those who object to it being voted the money it needs to do a better job. There's no doubt that many DOC staff feel under siege.

So there is sympathy for the department and its predicament. However it is clear that senior levels of DOC are susceptible to political interference, and that personal ideological views colour the advice to ministers and other authorities.

Contents

Challenges continued...

It's often a puzzle as to who prepares or requests some of the many reports and discussion documents that get written and released.

So what is required in order to protect conservation values, and provide for recreational interests in the high country? Firstly to retain in public ownership and control those lands with significant conservation values, and secondly to secure legal public access to these and other lands and waters for recreational users.

Some areas, particularly those suitable for intensive farming and other activities like grape-growing and forestry, could be freeholded. Subalpine and alpine areas should be surrendered from leases; other areas could be the subject of special leases to cater for a variety of activities mindful of the need for sustainability.

It's certainly time to protect a raft of qualities such as water and soil, scientific, botanical, and landscape/open space values.

Wetlands and the margins of rivers and lakes should be better protected. So should historic sites for their cultural value. Native forests and shrublands need more recognition, and there's an urgent need to conserve both our short and tall tussock grasslands.

Some people—not too many I believe — think that private owners will quite happily and responsibly attend to these matters, I don't. Some promote the idea of covenants. Covenant is a word with a nice ring to it, but I'm not convinced that this approach will work. Covenants can be amended or extinguished in secret without any public input.

To many, the best way of resolving the issues and coming up with tenure reviews which cater for the considerable variety of interests and concerns about the high country, is to reclassify the land on a property by property basis. Subject to provisions for sustainable land use, public access, marginal strips and conservation values, freehold much of the lower country ("developed" river flats and terraces), issue special leases over the mid-altitude lands, take out the rest and give it to DOC. (Perhaps a separate category for currently highly degraded land.)

In Otago and now in Marlborough there are instances where this has been done to the satisfaction of all parties. This approach is not as "clean" a method as the privateers would like — but it's one which is most likely to achieve the best result overall.

Such a system would seem to provide benefits all round: conservation values would be better protected, the public's recreational and other interests would be secured and often enhanced, and others would be able to get on with diversifying and optimising and land's productive potential.

Brian Turner lives in Dunedin and is a spokesperson for PANZ. His books include 'Beyond' which won the 1993 New Zealand Book Award for poetry. He also writes on sport and recreation.

This article first appeared in *Forest & Bird,* November 1994

Queen's Chain

Marshall welshes on 'Queen's Chain'

Remember the headlines last year? —

"Government drops Queen's chain law change!"

On 27 October 1993, Conservation Minister Denis Marshall stated in a press release that he accepted the report of the Working Party he set up to study the proposed changes to the "Queen's Chain" in the Conservation Amendment Bill.

The Minister said that the Working Party had recommended that Clause 14 — which contained leasing and licensing provisions — be dropped, because the need for it has not been clearly demonstrated by the Department of Conservation. The Minister accepted this recommendation.

Mr. Marshall continued, "*I will refer the report to the Select Committee, and ask it to further investigate the problems identified by the Department of Conservation, and — as suggested by the Working Party, to look at other ways of solving the problems.* I note that the Working Party have already made some suggestions in this area" (our emphasis, and following).

"I would like to thank the members of the Working Party who have put many hours work into this issue. They have produced a constructive document, which I'm sure will help achieve our aim of maintaining and improving public access to the Queen's Chain," said Mr. Marshall.

Since that time the Planning and Development Select Committee has been hearing submissions on the Bill, on the Working Party's report, and John Blincoe's Queen's Chain Protection Bill. The committee split off what it considered to be non-contentious parts of the Conservation Amendment Bill and reported these back to parliament. The contentious 'marginal strip' provisions are still with the committee.

In *Public Access No. 4* we reported that DOC officials had put before the committee schedules of alleged difficulties with the current Conservation Act as justification for leases etc., with attendant trespass rights over marginal strips. The Department couldn't or wouldn't produce such information for the scrutiny of the Ministerial working party of which PANZ was a member. PANZ correctly predicted at the time that, after the working party had been disbanded, DOC would produce 'new' evidence to support leases etc.

The Department has now produced "for the benefit of the select committee exercise", "marginal strip problem cases" from Otago and Auckland. DOC states that, at the time of the working party's deliberations, it was not able to provide examples of activities on marginal strips, "not from lack of examples, but from a lack of information available." This gobbledegook confirms that the department promoted fundamental changes to the legislation, without evidence to support change.

Four cases from Otago were advanced as reason for leases over marginal strips, despite lack of certainty that structures and activities were in fact on marginal strips. One case is cited to be *adjacent to* a marginal strip. Two Otago baches are on a "seashore reserve", but with doubt over the actual status of the land. Another bach "*may* technically be on marginal strip".

DOC's Auckland Conservancy provides the bulk of cases—"Inspections by Conservancy staff have identified cases of *abuse or illegal encroachments* (our emphasis) by

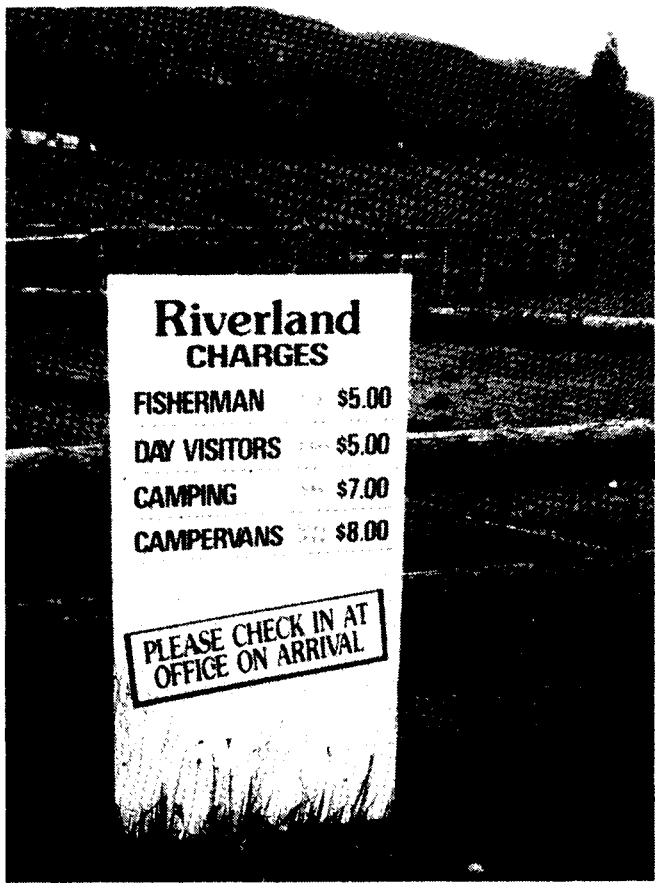
Queen's Chain continued...

adjoining owners on 54 of them" [marginal strips]. It seems that DOC is intent on rewarding abusers of public property with legal occupancy rights. *The Department argued before the working party that the only way it can control and eliminate abuse and encroachment is to licence it!* Such a view ignores the fact that they already have the powers they need to stop private occupation and abuse of strips, if they so wish (Conservation Act, sections 36, 39, 44, 45).

Twenty-seven of the Auckland cases involve grazing of marginal strips, a situation common to most strips throughout New Zealand. In our view this is no reason to create trespass rights over public land. To create an ability to do so would destroy the primary reason for the Queen's Chain.

Another 7 cases are cited to be of duck shooting 'mia-mais' on marginal strips! So much for 63 per cent of DOC's 'proof' that the law needs fundamental change! Remaining Auckland cases involve a factory encroachment where there "has been considerable spilling and dumping of waste down the river bank", encroachment by a "multi-million dollar" garden centre which "is performing well" (the relevance of such information in relation to DOC's functions is unclear), encroaching fencing and buildings, and to allow a one-day fishing contest! For such reasons the department claims that it needs cart-blanch leasing and licensing powers over *all* marginal strips throughout New Zealand.

Within the 'new information' is a case of surplus Crown land being disposed of *before* a marginal strip was laid off—contrary to the requirements of section 24 of the Conservation Act. There is also evidence of DOC appointing adjoining owners as "managers" over marginal strips for the presumed purpose of excluding or controlling the general public and "to formalise grazing". PANZ considers such appointments are contrary to the statutory duty for managers (s 24H) to best serve the purposes of marginal strips, including enabling public access. PANZ believes that such abuse of statutory power is indicative of what will likely follow if an ability to issue leases and licences over marginal strips is granted to DOC.



EASTERN FISH & GAME COUNCIL

The road-end—Mohaka River. Demands for payment for access, and use of rivers, is becoming more prevalent in New Zealand. Private control over the Queen's Chain, a consequence of the Conservation Amendment Bill if it becomes law, will result in exclusion of the public in many areas and push up charges for access over private land.

DOC roundly lost its case for leases and licences before the working party. The same officials service the select committee. For many months they have been re-running their case before the committee. In October this year, PANZ appeared before the committee, to discover that the arguments that were supposedly 'won' last year, were being re-visited. This led to the following letter in the *Otago Daily Times* (October 25, 1994)—

> Your report (11.10.94) [on a] select committee hearing in Dunedin on Queen's Chain legislation omitted a key issue. I drew to the Planning and Development Committee's attention that before the last election the Minister of Conservation publicly accepted a Government-appointed working party recommendation that controversial proposals for leases etc. over marginal strips be dropped from the Conservation Amendment Bill (No 2). Such leases would create trespass rights over water margins thereby excluding the public from publicly-owned river banks and the sea shore.
>
> However it has come to light that the Minister did not do as he promised in a press release (reported in the *ODT*, 28.10.93), *by referring the report to the select committee and to ask it to look at other ways of solving problems of private use on marginal strips.* Instead the committee had to ask that the Minister supply the report to it for consideration. It therefore appears that the report and its recommendations have no special status in the parliamentary process. All the matters resolved last year are now up for reconsideration. The government is in danger of being seen as breaking yet another promise, with last year's undertaking that it would not privatise the Queen's Chain merely an electioneering ploy.
>
> Bruce Mason
> Public Access New Zealand
> (Member of "Queen's Chain" Working Party)

Denis Marshall, Minister of Conservation, replied:

> "There is a simple answer to the issue raised by Mr. Mason on the issue of the Queen's Chain and the working party recommendation. I *may have* accepted the thrust of the working party's recommendation, but that does not bind the Parliament to a particular course of action. *The committee report cannot have any greater status than any ordinary piece of policy,* which automatically goes through a Select Committee before becoming law. At the time of the working party recommendation, the Bill was already before a Select Committee. That committee, in its deliberations, *may produce additional information I was not aware of at the time of the working party report.* I cannot interfere with the deliberations of the Select Committee or ignore the outcome of its process" (our emphasis).

The Minister did more than "may have" when he accepted the working party's recommendations. In the Minister's press release quoted above *he accepted the recommendation that Clause 14, allowing leasing and licensing, be dropped.* A 'new information' game-plan is evident.

Queen's Chain continued...

The Minister did not dispute PANZ's contention that he failed to refer the working party's report to the select committee or to ask them to investigate alternatives to leases and licences.

Before last year's general election the Minister and Prime Minister led the public to believe that Government had backed off the controversial clauses and that it had the power to do so. Surely, as a Minister of the Crown, Mr. Marshall must have known at the time of his public assurances what the respective roles of executive government and select committees are? It is no use for him to now hide behind a select committee on which the Government has a majority, to avoid giving effect to well-publicised promises to the electorate.

In recent years there have been two full-frontal attacks by Government on the concept of the Queen's Chain. Massive public concern on both occasions, to the extent of becoming an election issue last year, indicates that if Government persists with privatising the Queen's Chain it will never be forgotten, or forgiven!

What you can do

- Write to Mr. Marshall asking him to stand by his acceptance of the working party's recommendations.
- Write to the Prime Minister, demanding that National's promises during the election campaign be honoured.
- Write to the news media.

Treaty matters

The Principle of 'Partnership'

Strenuous efforts by PANZ and other non-government organisations (NGOs), over many months, has forced DOC to finally produce a response to matters raised in the PANZ monograph entitled *The Principle of 'Partnership' and the Treaty of Waitangi.* The monograph concluded that there was no basis in law for DOC to be pursuing 'partnership' policies with iwi Maori and that the department is incorrectly implementing its responsibilities under section 4 of the Conservation Act, which are "to give effect to the principles of the Treaty of Waitangi".

In September senior staff of DOC, and NGOs, met to discuss the issue, but with PANZ absent. NGOs were concerned that DOC should have paid the monograph author's fare to Wellington; something PANZ was unable to afford. As it transpired DOC did not produce a written response to the monograph as claimed, instead they replied to a separate letter from PANZ which raised only some of the issues covered by the monograph. Author Bruce Mason produced a critique of DOC's response for circulation to the meeting in his absence.

In a letter of 22 December 1993 to the Director-General of Conservation DOC was asked by PANZ, among other matters—

To cite the statutory, case law, and constitutional basis for determining—

(1) That a partnership exists or should exist between DOC and iwi Maori in the ownership or management of lands and natural resources vested in DOC ;
(2) The nature of such a 'partnership';
(3) As the manager in trust for public lands, that you have power to take steps to divest management or ownership of public resources via partnerships with iwi Maori;
(4) What is the mission of the Department, and the constitutional and legal basis for this?

After resubmitting the letter three times, DOC's belated response of 1 September 1994 states that it is an answer *in general terms*. It does not address most of the critical detail contained in the PANZ monograph and avoids major areas such as discussion of the 1987 SOE lands case (which introduced the concept of an (undefined) 'partnership' between Maori and the Crown into our common law), the non-implementation of Government's standing policy *'Principles for Crown Action on the Treaty of Waitangi'*, application of Treaty principles within the department, and the conclusions of the monograph.

Five key issues emerge from the DOC response—

Issue 1
The context of the SOE 'Lands case' versus that of the Conservation Act

DOC acknowledged that the requirements of section 4 of the Conservation Act 1987 are weaker than the directive in the State-owned Enterprises Act 1986 (section 8) which resulted from the Lands case. They also acknowledged that the meaning of the 'principles of the Treaty' will depend on the context in each case.

Such admission undermines the direct application by DOC of principles derived from the Lands case. As the context of each case and statute is critical to understanding Treaty principles, DOC cannot safely infer from the Lands case that there is a generic principle of 'partnership' affecting its functions and the resources administered by the department.

Issue 2
Partnership as a 'short-hand' categorisation

DOC has recently referred to 'partnership' as "short-hand" for the observations of the Judges in the Lands case who held that the Treaty *signified* a partnership between pakeha and Maori.

PANZ's analysis of the Lands case reveals that the Judges did not state that partnership was 'short-hand' for the relationship. Rather it is DOC's interpretation, not that of the Courts, that "categorises" the relationship as one of 'partnership'. In the Lands case the Judges defined the relationship as requiring reasonable action and good faith between the parties. Later, in the Forest case, the relationship was deemed to be founded on "reasonableness, mutual cooperation and trust".

The Judges did not state emphatically that a partnership existed. They said that the relationship *signified* and *inferred*, *something in the nature of a partnership.* Elsewhere in the Lands case Casey J said that it was a relationship *akin to partnership*.

Issue 3
Partnership an "overarching principle"?

DOC state that 'partnership' is an "overarching principle" derived from the Treaty, and cites the Broadcasting assets case

as authority. However in that case their Lordships categorised the principles of the Treaty as '*underlying*' mutual obligations and responsibilities, not as 'overarching' as claimed by DOC.

The only reference to an 'overarching principle' in relevant cases is that by Richardson J in the Lands case who identified 'a solemn compact' as "the overarching principle", not 'partnership'.

Issue 4
No automatic equality in the relationship

In a major concession, the DOC opinion, without saying so, concedes the central thesis of PANZ's concerns over the Departments 'partnership' approach. The department acknowledged from the Forests and Coal cases, which occurred subsequent to the Lands case, that "with respect to claims to resources" the Courts did not determine that this "automatically require[s] equal shares between the parties". This admission is an acknowledgement of the central flaw in moves towards divesting or 'sharing' ownership or management of public resources with iwi. Such an intent, reinforced by erroneous statements by the Minister of Conservation that Maori are "equal Treaty partners" with the Crown, has no lawful basis in the management of public resources.

Issue 5
DOC as law maker?

DOC's reply records "the potential for judicial activism in other areas of law, in particular the approach to the application of Treaty principles", earlier noting "there may be occasions in which there is a moral although not a legal duty to ensure adherence to the spirit of the Treaty by acting in accordance with its principles".

This raises the issue, is DOC to pursue 'moral' or 'politically correct' duties by *anticipating* developments in judicial law making, or follow established law? To pursue the former course, as the Department appears to be doing, conflicts with the Department's mission which "is found in the various Acts which it administers and which confer functions upon it".

Conclusions

The DOC response confirms the basis for the central criticism contained in "*The Principle of 'Partnership' and the Treaty of Waitangi"* —that DOC is *extending* the determinations of the Courts, under a mythology of 'partnership', well beyond what the Courts have defined.

There is an inherent and inescapable connotation of equality between the 'partners' that make the use of the term inappropriate in the context of the Treaty and Treaty principles. In common and departmental parlance the concept of 'partnership is ill-defined, confused, and misleading—dangerously so in regard to the Crown's obligations to all citizens.

The PANZ critique concluded that the danger is manifest in DOC policies for divesting ownership and for 'shared' and 'co-management' of public resources with iwi under an assumption that an equality of partnership exists. PANZ contends that such policies have no basis in judicial or statutory law.

From this drawn-out, excruciating contest, it appears that DOC is rethinking its approach to its relationship with iwi Maori. DOC's September newsletter for NGOs records that DOC's 'Partnership Plan Steering Committee' was [re]considering the name for the plan and concluded that "it should reflect the goal of cooperation" and the context of the DOC/iwi relationship. "The whole purpose of the document was to seek to establish a cooperative relationship between DOC and iwi based on the Treaty principles of good faith, reasonableness, mutual cooperation and trust".

PANZ welcomes such a development as it reflects the Courts' interpretations of Treaty principles, and does not necessarily lessen the rights of other New Zealanders to be consulted over, and to influence, the control and management of public lands.

Disappointing Parliamentary Commissioner's report

We have previously reported that the Parliamentary Commissioner for the Environment initiated an "investigation into Treaty negotiations and the involvement of affected parties". This was as a result of increasing complaints about the process employed by Government in its dealings with public lands.

PANZ has concerns over the conduct of the inquiry. The Commissioner's initial terms of reference were changed to an "investigation into procedures for maintaining the quality of the environment in the settlement of Treaty claims". This is a different, and much narrower focus from that embarked upon. Issues of public patrimony over public lands, Government bypassing the Waitangi Tribunal, and the validity of Government responses to claims, being the prime matters at issue, were avoided by the inquiry.

On 6 September Commissioner Helen Hughes reported the findings of her inquiry. PANZ made extensive submissions on the basis of the *initial* terms of reference. Our submissions have been extensively referred to in her report, but only within the confines of the *new* terms of reference.

The central conclusion reached in the report is that the public is ill-informed and 'uneducated' about settlement of Treaty claims. In an accompanying press release Mrs. Hughes "hope[s] that my independent report...will further assist the public to understand the stages and the procedures of the Treaty settlement process". The presumption is that if we, the public, were better informed (i.e., less ignorant) we would be more accommodating of the process, and of the notion that *all* Treaty claims/grievances by Maori are valid. The Commissioner's view is a continuation of a position that has been promoted by her office over several years. The narrowing of the terms of reference meant avoidance of critical examination of such notions.

PANZ believes that it is well informed about the validity or otherwise, and the Crown's conduct, of the very large and contentious Ngai Tahu lands claim. The Commissioner, while identifying the validation of claims as a necessary step, does not comment on the propriety of the Crown alone deciding on its culpability under the Treaty. There is no recommendation that all claims be assessed by the independent Waitangi Tribunal. Rather the Commissioner comments—

> "In some cases the Crown may not accept a claim as involving a breach of Treaty obligations. But as a matter of good government, as a means of acknowledging the relationship of the tangata whenua with the resource or taonga in issue and of recognising mana, it may nevertheless take

action on a 'without prejudice' basis to acknowledge that relationship *rather than to give redress for an alleged Treaty breach.* In other cases, *where the Crown acknowledges a wrong, though without formal validation of a claim, that acceptance will provide a compelling basis on which to proceed to settlement"* (our emphasis).

It appears that the Parliamentary Commissioner is promoting social agendas that have little to do with taking "full and balanced account" of the principles of the Treaty. This is one of the purposes of the Environment Act under which the Commissioner operates. In the absence of proven Treaty breaches there are other matters of 'good government', such as the principle of equality between citizens, derived from Article III of the Treaty, which deserve her attention.

The Commissioner's confusion of issues is demonstrated by a section headed 'Validation of Treaty claims' which contains nothing about the subject, only about *the environmental effects* of breaches of the Treaty.

She does however identify the need for greater public consultation in the claims settlement process, but this is confined to the public providing Government with 'environmental information'. The public consultation "may also...provide a basis for public education on Maori values and culture".

Mrs. Hughes states that, in relation to the Ngai Tahu land claim, "there is a danger in the negotiation phase that claimants and their respective hapu or iwi will be insufficiently resourced to respond to well organised interest groups". PANZ has a very different perception as to the availability of resources, like money and well paid consultants. With few resources behind us, PANZ is nevertheless proving to be an effective advocate.

Public consultation needed

There have been repeated calls from PANZ and other groups for a meaningful public consultation process on the use of Crown and public lands in Treaty claims settlements.

Earlier this year PANZ submitted to the Minister of Justice a proposed three-step process, based on a model conceived at a meeting at Queenstown to consider the Greenstone Valley issue. An abbreviated version of our proposal is reproduced opposite. We believe that the three steps are essential if the public is to be satisfied that there are justifiable grounds for alienating public lands, that all alternatives have been properly evaluated, and that a durable settlement will result.

Government forgetful and confused

Amnesia is apparently alive and well in Wellington. In 1992, Government purchased three high country stations for "possible" future settlement of Ngai Tahu land claims. Cabinet papers confirm the point. However recent Ministerial statements have consistently dropped the "possible" from the equation. Yesterday's commitments for (meaningful) public consultation over the future of the properties also appear to be yesterday's promises. "*Some* station land will be retained" reads *The Southland Times* on October 6, 1994.

A spokesman for Conservation Minister Denis Marshall was reported as saying that the Wakatipu high country stations *are destined to be owned by Ngai Tahu,* but, *some* areas with a high conservation value will be retained as public land.

PANZ proposals for public consultation on the use of public and Crown lands for Treaty settlements

(1) Crown formulates resource information paper for public release and comment.

Resources to be reviewed include—

- Treaty Issues
  - (a) The grievance(s) lodged before the Waitangi Tribunal.
  - (b) The Tribunal's findings of fact on the claim.
  - (c) The Tribunal's recommendations if any.
  - (d) An explanation from the Crown why it accepts or doesn't accept the recommendations of the Tribunal and why the lands in question are proposed for settlement of a claim.
  - (e) An explanation why the use of other Crown assets is inappropriate for settlement of particular claims.
- Assessment of conservation values including geology, botanical, fauna, fisheries/aquatic, landscape, and heritage values.
- Assessment of recreation values.
- Maps showing boundaries and public rights of access to and through the area, including marginal strips, legal roads, rights of way etc.
- For Crown land, land use capability information including soil and water conservation values.
- Government policies on reclassification, retirement, surrender etc., that apply to high country Crown lands.
- For public conservation areas the current status, statutes, and particular provisions that specify protection and management requirements, and public rights of use.

(2) Crown to publish a paper with the main options available for settlement of the claim.

The options to range from—

- (a) Allowing a future owner/occupier to have maximum freedom of land use to
- (b) Retaining or allocating significant areas in public ownership/or with public constraints over use

—and all other options in between.

- Published for public submission.
- Public hearing of submissions.

(Steps one and two being the main opportunity for public comment and input).

(3) When negotiations between the Crown and the claimant have arrived at an "in principle" agreement, this to be published for public submission so that the Crown is assisted in arriving at the Crown's final negotiation position.

Implementation

Dependent on the status of the area, either the local Conservation Board or the Commissioner of Crown Lands would be the public-input facilitating agency on behalf of the Crown. Other agencies, e.g., DOC, Landcorp, Justice Department would be responsible for preparing the resource information.

Treaty matters continued...

Determining which areas go into the conservation estate has been delayed because a 'productive values report', due out in late July, has only just been completed. The spokesman for Mr. Marshall said a tenure review was expected to start in August [1994?]. It would involve the public and determine which areas of the station were freehold and could go to Ngai Tahu and which areas were retained as public land.

Otago Fish and Game Council manager Niall Watson reacted critically to the announcement saying that a properly conducted tenure review would mean large chunks of the stations would go into the conservation estate. "When you start looking at the values, you quickly realise most of the properties should go into the conservation estate. The fact the Government bought them with the intention of possibly using them for settlement [of] claims is the Government's mistake. They must not bias the outcome just because they mucked up in the first place." "The Government has got itself into this mess because it made a hasty decision, obviously without researching the issue properly. We're happy to see the Government take it's time", Mr. Watson said.

A spokeswoman for Treaty Negotiations Minister Doug Graham was reported as saying that *the stations were specifically purchased for use in a settlement with Ngai Tahu and all land, bar that which went into the conservation estate, would go to them* (our emphasis).

Meanwhile the Government has stated that it intends to make an offer of partial settlement to Ngai Tahu within the next few weeks. It is to be hoped that any offers involving the Greenstone Valley area will be deferred until after the promised public consultation process is complete.

Greenstone Valley Petition

In response to requests from supporters, PANZ has launched a petition on the Greenstone Valley issue. This is different from an earlier, independent, petition which opposed possible monorail or roading development in the valley. That was supported by almost 7000 people.

The PANZ petition is concerned about use of the area for claims settlement and reads—

> "WE ASK that the Greenstone, Elfin Bay and Routeburn Crown lands near Queenstown are not used in settlement of land claims by Ngai Tahu.
>
> INSTEAD we ask that these mountain lands be added to the conservation estate for the benefit of all New Zealanders, and
>
> ALTERNATIVE Government assets, such as Landcorp farms, be used for settlement of proven grievances by Ngai Tahu."

PANZ has not vigorously promoted the petition because to do so, with the object of obtaining large numbers of signatures, would have distracted us from other initiatives underway. We hope to have the petition presented to Parliament before the Christmas recess. It should be referred to a select committee for consideration which will provide an opportunity for us to present evidence to MPs on the outstanding recreation and conservation values of the area and on the alternatives, like the 'SOE option' (see below).

Sir Tipene goes overboard!

In the 1994 annual report of the Ngai Tahu Maori Trust Board, chairman Sir Tipene O'Regan made a scathing attack on PANZ—

> "During the year Ngai Tahu experienced further hostility being orchestrated and sustained by conservation organisations, notably Public Access New Zealand. This organisations was formed to defeat Ngai Tahu's mana whenua aspirations in the South Island and has opposed just about every arrangement we propose to the Crown that would give honourable effect to the findings of the Waitangi Tribunal. They have so effectively frightened the Crown that they are now virtually a party to the negotiations, and the Tribunal Report and its findings on a number of key matters now seems destined to be completely frustrated. The most regrettable dimension of this is how quickly the Crown has deserted the principles of the Treaty of Waitangi and caved in to the Green lobby. Ngai Tahu (and other iwi) now face a portfolio of Crown policy opposing iwi aspirations in respect of whales, the conserved estate, the coastline, traditional fisheries/mahinga kai, lakes, rivers, mountains, (and for us) pounamu. On every front, whether or not land or resources are within the "Conserved Estate", we are now facing attack from conservation groups and individuals claiming to represent the public interest. There are strong elements of racism within these attacks although such suggestions are hotly debated and piously denied".

For many months PANZ and kindred organisations have been subjected to accusations of "racism" by Sir Tipene and even referred to by him as "the Green Group SS" (*The Press*, June 11, 1993).

Since our inception we have consistently focused on public access and the retention of publicly owned land for all New Zealanders, irrespective of genealogy. If that is perceived as 'racist', then are happy to wear that label. Those who spit out such accusations should invest in a full-length mirror and a good dictionary. They need to read out loud definitions of 'racism' while looking long and hard at themselves.

Sir Tipene's statements are factually incorrect on these grounds—

- We are primarily a recreation rather than a conservation organisation, not "part of the Green lobby".
- As a full reading of our objects shows, we are opposed to privatisation in all its forms and loss of secure public access to publicly-owned lands. That was spelt out in our inaugural publication of September 1992. The record shows that we were not formed for the purpose of opposing Ngai Tahu "aspirations".
- Even if we had wanted to, it would not have been possible for us to have "opposed just about every arrangement we (Ngai Tahu) propose to the Crown", because we simply haven't known about most of them. We are not party to the negotiations which are conducted in secret.
- PANZ has no position on whales, traditional fisheries/ mahinga kai, or pounamu. They are beyond our charter.
- PANZ has consistently advocated a fair and equitable settlement of Ngai Tahu's *proven* land claims consistent with the findings of the Waitangi Tribunal. This is a matter of record. As further proof see "Hands on SOEs" below.

Treaty matters continued...

PANZ publicly responded to Sir Tipene's accusations by describing them as "mischievous distortion" and as "insulting and factually incorrect" (*Otago Daily Times*, 27 October 1992). Spokesperson Bruce Mason, challenged Sir Tipene to prove the claims he made in his chairman's report. "It's so easy for (Sir Tipene) to make such claims but he hasn't produced any evidence. He's not so much discrediting us as discrediting himself."

PANZ has consistently advocated a fair and honourable settlement of proven Treaty grievances. We want to ensure the future accessibility of public lands for the public at large as well as seeing that there are settlements in accord with the findings in fact of the Waitangi Tribunal.

In the case of the Ngai Tahu claims the Tribunal had found there was no proven grievance against the Crown over the three Queenstown stations. The Crown had lawfully purchased the South Island high country.

PANZ does not have a blanket objection to the use of public lands in settling proven grievances but believes the public should be consulted on specific proposals.

Dr. Margaret Mutu follows

Dr. Mutu is a Maori studies academic, member of the New Zealand Conservation Authority, and served on the Board of Inquiry which reviewed Government's draft *New Zealand Coastal Policy Statement*. She was also a referee for the Parliamentary Commissioner for the Environment's recent review of *Environmental information and the adequacy of Treaty settlement procedures.*

Dr. Mutu presented a paper entitled *Maori Participation and Input into Resource Management in Aotearoa/New Zealand* at the Ecopolitics VIII Conference held at Lincoln University on 9 July 1994.

Of particular concern to PANZ is a statement on page 13 of her paper that—

> "...a further rather insidious factor that has crept into this debate (use of public land in Treaty settlements). Some lobby groups with good access to the media and government are using the very successful environmental lobby to promote notions of racial superiority of Pakeha New Zealanders in respect to managing these lands. A spokesman of one of these groups was publicly rebuked by the chairman of the Board of Inquiry (on National Coastal Policy) for demonstrating such attitudes to the Board's Maori members during the (public) hearings".

As reported in *Public Access No. 4*, Bruce Mason appeared before the Board of Inquiry on behalf of Public Access New Zealand. We reported our concerns over the conduct of the Board of Inquiry in relation to the hearing of the PANZ submission—

> "PANZ representative Bruce Mason, after raising doubts as to the validity of a concept 'partnership' between Maori and the Crown as implied in the policy, was lectured by two Board members on the meaning of the Treaty. He was told not to interrupt by the chair, despite this supposing to be an inquiry into community views rather than a platform for Board members to advance their own. The content of their dissertations were highly challengeable, but Bruce was not permitted to do so.
>
> "The chairman, Judge Arnold Turner, also asked Bruce three times "who is going to pay?", in relation to enhancing public access, despite this being beyond the brief of the inquiry, and that enhancement of access is a duty under the Resource Management Act. Bruce's impression was that it was an access-hostile environment. The chairman terminated the PANZ submission by saying that "he had heard quite enough from Mr. Mason"—a feeling that was reciprocated, but not verbalised! "

As a result of us publishing the above there has been correspondence from Judge Turner who takes issue with PANZ's stance on the coastal policy, but did not dispute our account of the conduct of the inquiry in relation to the hearing of PANZ's submission.

PANZ wrote to Dr. Mutu in August, asking her if Mason is the person she referred to and to enlighten PANZ as to—

- the nature of the alleged "notions/attitudes of racial superiority";
- the form of the 'rebuke' from the chairman.

No response has been received.

A 'sea of guilt'

Other intemperate reactions to our advocacy often reflect the confused, guilt-ridden name-calling that has characterised public debate over Maori related matters for the last decade. PANZ believes that the debate needs to mature beyond cliches and nonsensical accusations of "racism" against any who dare to question the Crown's handling of claim settlements—especially those involving publicly owned lands. Such accusations may fit some, but that does not mean that they fit everyone with an understanding (a) of the nature of the Waitangi Tribunal's findings, and (b) the Government's unprincipled use of public lands in settlement of proven, unrelated grievances while keeping in reserve for future sale its commercial assets.

> Why should any New Zealander, Maori, non-Maori, claimant or non-claimant, believe that Government is acting with any more regard for justice and the welfare of its citizens than in any other business of Government?

Groups like PANZ who are concerned about correcting the inequities of the past while not creating fresh injustices, are not about to disengage their critical faculties in a sea of guilt. Why should we believe that the Crown/Executive Government can be trusted to implement the principles of the Treaty of Waitangi any more than it could be trusted to do so last century?

All New Zealanders have rights and obligations stemming from the Treaty, including a right under Article III to be treated justly and equally. Governments, for their own reasons of expediency, from time to time see things differently. It would be a very sorry day for New Zealand if public watch-dogs are bludgeoned into silence by adopting an acquiescent, uncritical approach preferred by some critics.

Hands on SOEs!

PANZ has produced a 65 page report entitled *'Landcorp farms and the SOE option for Ngai Tahu claims settlement'* which has been sent to the Minister of Justice and the Ngai Tahu Maori Trust Board. PANZ hopes to put "the SOE option" back on the claim settlement agenda.

Our investigation of South Island state-owned enterprise lands revealed that government has massive commercial assets at its disposal and is able to avoid using public lands in the claims settlement process. The underlying issue for Government is the importance it attaches to financial considerations ahead of public concerns for continuing public ownership, protection and public access to public and Crown land.

It is also a test of Government's commitment to give proper effect to the principles of the Treaty of Waitangi. Reluctance to use SOE assets in claims settlement has to be contrasted with Government's ideological push towards privatising as many state assets as possible.

The investigation revealed 97 Landcorp farms totalling 78,300 hectares, in Canterbury, Otago, and Southland, within the Ngai Tahu rohe or tribal area Several of these were found to be within areas not awarded to Ngai Tahu at the time of land sales to the Crown last century.

PANZ has long considered that state commercial assets have the potential to provide the most suitable basis for Ngai Tahu to re-establish an economic base. Conversely we believe that there is no necessity to use public and Crown lands such as the Greenstone valley for settlement of proven claims by Ngai Tahu.

PANZ believes that the mountainous Greenstone-Routeburn area is greatly different, and hundreds of kilometres distant, from the highly productive farm and agricultural lands denied to Ngai Tahu elsewhere in the South Island. Whereas the Waitangi Tribunal validated Ngai Tahu claims over highly productive coastal and low country, their claim over the high country, including the Greenstone Valley, was roundly dismissed.

What PANZ is asking for is consistent with Ngai Tahu's statement of claim before the Waitangi Tribunal that any lands allocated to them should be representative of the land lost in both character and geographic distribution.

To proceed with a contentious and divisive decision to allocate the Greenstone valley area to a private developer, in the form of Ngai Tahu, would most likely result in on-going acrimony. That would defeat a principle purpose of Treaty claim settlements—the durable resolution of grievances.

The report concludes that the SOE resource is so vast and well distributed throughout the South Island, relative to proven claims, that there is no necessity to use unrelated public and Crown lands such as the Greenstone valley and public reserves.

The only public reaction to the report so far has been from Ngai Tahu chief executive Sid Ashton who says that "we are very interested in the Landcorp farms but we want the Greenstone valley as well" (*Southland Times*, 12 November 1994).

The SOE option

Landcorp Farming Limited

Most properties are ideally suited for settlement of proven Ngai Tahu claims, both in character and geographic distribution. Some are within the areas of 'reserves not awarded' to the tribe. These include the **Mt. Parnassus** and **Tiromoana Stations** in North Canterbury. These properties are either in or close to the pastoral lands refused to Ngai Tuahuriri, centred on Motunau and Hurunui. In addition, Landcorp's **Eyrewell Station** and **Langstone Farm** *are within the Waimakariri Block not awarded to Ngai Tahu.* Many other farms are in the general coastal/lowland localities where insufficient lands were awarded to Ngai Tahu (e.g., **Ealing Pastures, Seacliff, Orokonui, Akatore Creek, Waitapeka, Dawson Downs**). Other lands are highly productive and of similar character to those not awarded.

There is a vast array of highly productive farms in the Te Anau-Manapouri basin. These are in a highly scenic area bordering the World Heritage Fiordland National Park. In addition to farming, proximity to two tourist towns at the entrance to the park creates major potential for tourism development.

Landcorp Investments Limited

1345 properties are held by this Landcorp subsidiary, including several large rural properties potentially suitable for claims settlement.

BRUCE MASON

Hindon Farm, Otago. One of 97 Landcorp farms suitable for settlement of Treaty claims.

Treaty matters continued...

Crown Forests

Approximately 19,000 hectares of **Crown exotic forests** are *administered* by the New Zealand Forestry Corporation, on behalf of the government (Treasury), through a contractor, Resource Management New Zealand Limited. Unlike other former State Forests, these forests have not been sold or had Crown Forestry Licences issued. PANZ has been advised they have been held for possible settlement with Ngai Tahu. The forests are the **Naseby**, **Herbert**, **Silverpeaks**, **Raincliff** (Timaru), and **Geraldine forests**. With the exception of Naseby, these forests are in the general localities of 'reserves not awarded' to Ngai Tahu.

A summary of the report is available from PANZ for $3 plus $1 postage. The full report, including schedules, maps, and colour photographs is priced at $75 inclusive.

South Island high country

Access 'Number One'

Public submissions have made public access the number one issue arising from Government's review of pastoral leases under the Land Act—

'High country access wanted'

Timaru Herald, November 8, 1994

"Public access to the South Island high country was the most frequently mentioned issue in the submissions to Government on proposed pastoral lease tenure reform and conservation goals," said Lands Minister, Denis Marshall in releasing the report on the analysis of submissions.

"Many environmental and recreation groups want to see stronger public access and as a minimum, they wished to see secure public foot access to areas of significant, natural character and to water margins."

"A trial of 575 valid submissions were made, 448 by the due date of August 15 and 127 were late submissions. As a sign of good faith, late submissions were accepted up to September 6 and they have been given equal weight with those received by August 15. The submissions have been professionally analysed by consulting group Connel Wagner and are now available for public scrutiny," Mr. Marshall said.

"The submissions were based on three public discussion documents released earlier this year. They are: *The South Island High Country Review* (commonly known as the Martin Committee's report); *The Tenure of Crown Pastoral Leases: the Issues and Options* (produced by the Commissioner of Crown Lands); and a Draft Discussion Document: *Public Interest Goals for the South Island High Country* (produced by the Department of Conservation).

Of the tenure options put forward, the key farming groups favoured options maximising freeholding of pastoral lease tenure. The major conservation and recreation groups are strongly in favour of as much of the lease as possible being retained under Crown ownership in the conservation estate. A significant number of individual submissions favoured the status quo, arguing that the Crown should retain ownership of all pastoral leases to protect the public interest.

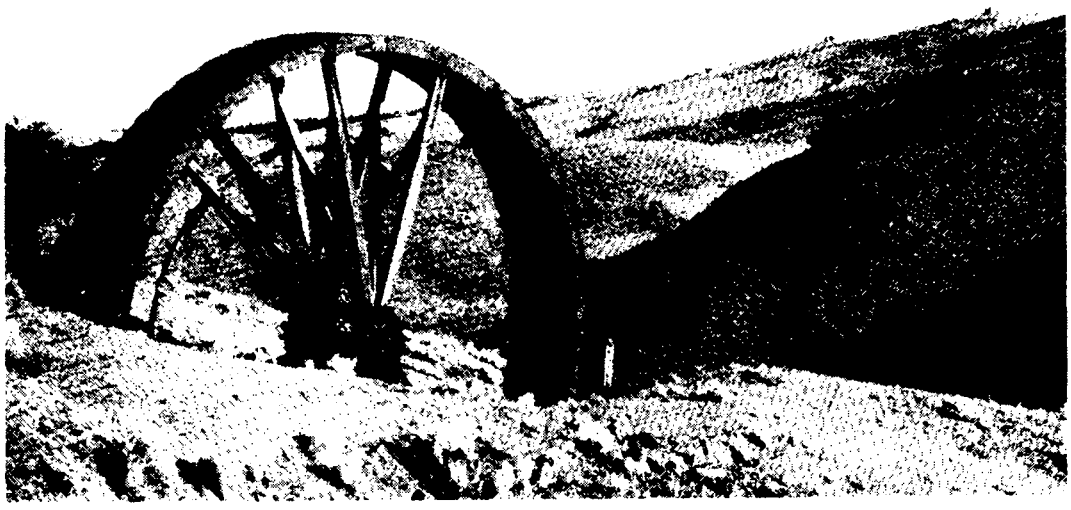
"While a wide variety of views were expressed, there was substantial agreement that tenure reform should be voluntary and done by negotiation, and the Government has always made it clear that there will be no element of compulsion in its proposed tenure reform package."

"The submissions have been of great benefit to the Government in deciding on the best options for progressing tenure reform as part of the broader policy of promoting sustainability in the high country," Mr. Marshall said.

The third report

In June the third paper entitled *'Public interest goals for the South Island high country'* was released to selected interests but was not publicly notified. The paper was prepared by DOC at the request of the Minister, and released by his office.

PANZ believes that the Minister has prejudiced the outcome of the Land Act review by his acceptance, prior to public submissions closing, of the working party on sustainable land management's recommendation that 'public interest' goals need to be identified in the high country—with everything else made available for freeholding.



BRUCE MASON

Historic waterwheel in reserve on Carrick Range, Central Otago—one of very few public reserves in the pastoral high country. Tenure reviews should aim to create more reserves, and secure public access.

High country continued...

What started as a promising, well-considered review, has quickly degenerated into a ideologically driven advancement of private property rights. An early clue as to why there is a sudden rush to amend the Act is provided by Mr. Marshall's reported comment to the *New Zealand Farmer* (March 9, 1994) that non-agricultural stakeholders interests would be enhanced with the advent of MMP.

> The content of the 'public interest goals' paper has caused us to reverse our support for review of the Land Act. We do not see any necessity for legislative change for the purpose of tenure review. This is occurring successfully under the present Act.

In our view all that is needed are relatively minor amendments to the Land Act to—

- Make continued pastoral use on pastoral leases sustainable in an ecological sense. This could be achieved by creating a duty for the Commissioner of Crown Lands (CCL) to take account of the long-term ecological sustainability of pastoral uses when considering stocking limitations and discretionary consents.
- Create a duty for the CCL to seek and have regard to advice from DOC and Fish & Game Councils, as applicable, on nature conservation, commercial and public recreation, and fish and game management, in exercise of the CCL's statutory powers.
- Permit inspection of pastoral lands by officers of DOC and fish & game councils.

We are completely opposed to any enhancement of pastoral lessees' property rights such as removal of the current prohibition on freeholding. Reclassification from 'pastoral' to 'farm land', as provided for under the existing Act, should remain the only way of obtaining freehold title. We completely reject the approach that it be a matter of open-ended negotiation which determines land ownership. The whole approach is fatally flawed for protection of the public interest and must be dropped.

In our view the working party on sustainable land management was not competent to come to the conclusion that there is difficulty in identifying public interest goals in the high country and that this must be done as a precursor to offering freehold over everything else. The Minister's acceptance of their recommendation, and extending that to proposals for freeholding of identified public interest values, before public consultation has been completed, makes a mockery of the consultation process.

> We have conveyed to Mr. Marshall our assurance of continuing and strenuous opposition to Government's privatisation plans.

Mr. Marshall has accused NGOs of "continual misrepresentation" (Radio NZ 9/8/94) while failing to respond to our detailed concerns. Likewise Bill Mansfield, Director-General of Conservation has accused PANZ of "serious misrepresentation" of DOC's intentions and has questioned our honesty.

Insight into the official position is revealed by an address by DOC's director of estate protection, to Federated Farmers in June this year. John Holloway said that "we [DOC] certainly do not consider it necessary for the department to obtain full control of all areas of conservation interest in the high country. *There are areas which can be as effectively managed if held in private ownership with appropriate mechanisms to recognise the public interest*. Increasingly conservation is not just a matter of Crown ownership and control of certain specific lands but also a matter of joint community based effort across *all* lands" (our emphasis).

> In the department's submission on the high country review there is antagonism to prescriptive criteria for determining which land is retained in public ownership. Any criteria are perceived as removing "flexibility" and the ability to "compromise". This is 'official-speak' for wheeling and dealing without any rules or assurance that the public interest will be adequately protected.

"The department does not believe that any criteria for determining which land requires protection by retention in Crown ownership...should be prescriptive."

Apparently the department has already forgotten that it acquired huge areas of conservation and recreation land by the application of prescriptive criteria during the 'Great Land Carve-up' of 1986-87 between DOC and SOEs. This included 600,000 hectares that were mis-allocated to SOEs and clawed back into public ownership by the application of presciptive criteria.

We replied to Mr. Mansfield that we would welcome a well-researched paper from the department on the adequacy of private ownership mechanisms for protecting the public interest versus that provided by public ownership. Such a paper should have been the prerequisite to preparation and release of the 'public interest goals' paper.

Private management of 'the public interest'?

In the absence of such a paper from DOC, in August PANZ released a review of proposals for private management of recreation and conservation lands in the South Island high country.

> The review concluded that the shortcomings of Government's proposals are so severe that they cannot be taken seriously as a substitute for continuing public ownership.

PANZ reviewed the adequacy of several 'protective' mechanisms if Crown lands are freeholded, including covenants, management agreements, protected private land agreements, and district plan rules. An analysis of relevant legislation found the mechanisms seriously lacking compared to the security, accountability, and public remedies afforded by public ownership under the Reserves, National Parks, and Conservation Acts. Examination of the law showed a lack of security, with covenants able to be modified or extinguished at any time without any requirements for public notification or objection.

A practical consideration is a lack of accountability to the public for the actions of a landowner, or for public officials

High country continued...

responsible for upholding the terms of an agreement. A case was unearthed where there is a confidentiality clause preventing public disclosure of the terms of an agreement between DOC and a runholder.

It is assumed by the Government that it will save money if the land is under private control. However costs to the Government may be the same or higher than if held under public ownership. Under the terms of some existing agreements Government is liable for paying rates, weed and wild animal control, for wildfire suppression, fencing, and providing technical assistance and public services. In addition the Government will need to monitor compliance with the terms of the agreements. This will be a substantial burden if Government is serious about such agreements. It will also forgo revenue from commercial activities on the land.

These costs can be regarded as subsidies to the private sector for management of a privately-owned outdoors. PANZ believes that it would be more economical, and democratic, for the Crown to continue to manage conservation and recreation land itself.

> The biggest bugbear with the Government's proposals is a well demonstrated lack of political will to enforce the terms of covenants when breached by private landowners (for example Mt. Hikurangi on the East Cape).

However because covenants are legally enforceable *on* the Crown they are likely to become number one priority for the Department of Conservation. This will draw scarce funds away from management of public lands, causing reduced public services and protection. Paralleling what is happening in other areas of state services, the resultant public dissatisfaction with DOC's performance could then be used by Government as justification for privatisation of the public estate.

> PANZ believes that Government should get on with providing a substantial body of public reserves in the high country with guaranteed public access, rather than continue with the pretence of providing for public needs under private ownership.

Private management of 'the public interest'?: *Freehold with covenants etc., vs public ownership of the South Island high country. A review of 'protective' mechanisms for nature conservation, public recreation and access over private land, compared to public ownership and control. 12 pages. ISSN 0-9583363-6-9.*
Available from Public Access New Zealand Inc., P O Box 5805, Moray Place, Dunedin for $3.50 incl. postage.

Conservation Authority advocates public ownership

The Minister's appointed adviser, the New Zealand Conservation Authority, is convinced of the need for retention in Crown ownership of lands of (highest) conservation and recreation value. The Authority submitted to the Minister that only minor adjustment to the Land Act is necessary to encourage the property-by-property tenure reviews already under way. The Authority recommended "an amended Act to *reinforce* the purpose of the Resource Management Act in promoting sustainable management where land remains under leasehold tenure. The recognition of nature conservation, landscape and heritage values need to recognised in some form in the Act's objectives. The new Act could include "conservation" among its purposes by adopting the definition used in section 2 of the Conservation Act, which include the protection of natural and historic resources and opportunities for their recreational enjoyment."

In relation to the sustainability working party's claimed need for goals for identifying 'public interest goals', the Authority pointed out that it had published such criteria for conservation in the high country in 1992. The Authority also noted that "the Crown's interest is also clearly identified in the Reserves Act, National Parks Act, and Conservation Act, as well as in international agreements such as the Convention on Biodiversity".

> PANZ believes that Government should place greater weight on the Authority's views than that of the 'Martin' committee or departmental advisors.

It appears that a Land Bill will not be introduced to Parliament before the end of February 1995. Meanwhile several land tenure reviews are underway in Marlborough and Otago. It is hoped there will also be action in Canterbury in the near future. PANZ is putting considerable effort into liaising with officials, other NGOs, and undertaking field inspections and writing submissions. The overall success of the existing "inflexible" tenure review process confronts the officially promoted alternative of private ownership of the outdoors.

Health and Safety Act & public access

In recent months a threat to outdoor access has appeared from an unexpected quarter. The Health and Safety in Employment Act 1992 has been in force since April 1993. Recently some farmers barred public access to their properties because of fears that allowing the public entry may create a liability for prosecution if harm arises to visitors.

Matters came to a head when a Central Otago runholder was convicted as a result of a shearing contractor's daughter being caught in unguarded machinery. Her arm was severely injured. The Court held, that the runholder had failed to take all practicable steps to ensure that the machinery would not be a source of harm to any person. There has been widespread farmer reaction that the reason for prosecution was the presence a child on farm property, rather than an omission to prevent harm.

Labour Department inspectors have tried to dispel farmers' fears about the extent of their liabilities but, according the Department, many still remain ignorant of the Act and their obligations. Some farmers believe it is simpler to deny public access to their land than run the risk of being penalised under the Act.

In a press release of August 22, 1994, the Department states—

Health & Safety Act continued...

"The Health and Safety in Employment Act's principal objective is to prevent harm to employees, and other people at work or affected by the work of others. It requires employers to take all practicable steps to prevent harm by first identifying then eliminating, isolating or minimising hazards, to ensure that persons are protected from harm. The requirement, to take all practical steps to prevent harm to others is the main cause of concern to farmers, and this concern as resulting in some farmers believing that they should stop people using their property.

"It is not the intention of the Act to prevent people visiting farms or being permitted to enjoy out door activities on farm properties neither is it desired to require farmers to be responsible for the actions or inaction of others, or to make them liable for accidents or events which are not in their ability to control or prevent.

"People allowed on farm property have responsibilities for their own health and safety and an obligation to obey any instruction or warning given by the farmer. If the farmer warns someone, and then notices the person ignoring the warning given, the farmer should not simply walk away. To do so would represent a failure by the farmer to take "all practical steps" (under section 6 of the Act) to prevent the occurrence of harm. This was the conclusion reached by the Court in relation to the South Island farmer. If, however, despite, all practicable steps being taken by the farmer, a person was harmed, the farmer in taking practicable steps would have satisfied the provisions of the Act, and have no liability.

"People cannot simply walk on to farm property, act irresponsibly, and then expect the farmer to be held responsible. If, for example, a duck shooter inadvertently shoots a companion, or a horse rider broke his or her neck jumping a farm gate, there would be no liability on the farmer.

"If farmers allow people to use their property they should advise them of known hazards which those people need to be made aware of. If a person was injured while engaged in their own activity (permitted by the farmer), the farmer would not have liability. If, on the other hand, the person was injured by an activity carried out by the farmer or one of the farmers employees, the farmer would need to show that he had taken all practicable steps to ensure that harm did not occur, as would the farmer's employee.

"Farmers and other landowners who allow groups to engage in outdoor activities on their property would not be held responsible for any incident that was outside their ability to control, and it is not the intention of the Act to directly cover such outdoor activities. Farmers are encouraged to keep visitors and inexperienced family members (especially young children well away from work activities which have the potential to cause harm. Common sense would, in most cases alert farmers to what had the potential to cause and whether practicable steps can be taken to prevent harm".

In other news media coverage Departmental inspectors are reported as stating that since farms were regarded as workplaces, farmers were expected to take "practical steps" to protect employees and visitors from industry hazards such as machinery, chemicals, chainsaws and other dangerous equipment. "But this does not require them to protect visitors from natural hazards such as cliffs, fences, rivers and stock. Farmers were not responsible if someone broke an ankle by tripping on a rabbit hole or had a trail bike accident." (*ODT*, 20/10/94). "Where the hazard was unforeseen there was no responsibility" (*ODT*, 28/10/94).

It has been reported that at least one farmer now requires visitors to sign a declaration absolving the property owner of liability under the Act. However this does not absolve landholders of liability.

The debate over the Health and Safety in Employment Act has overlooked the fact that farmers have had a similar liability under the Occupiers' Liability Act since 1963. There is a common duty of care to visitors that they will be "reasonably safe". The duty does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted.

PANZ believes that while it is correct to state that is not the intention of the Health and Safety Act to cover recreational activities, nevertheless the Courts may in future interpret the Act to do so. However this would first require the Department of Labour to bring a prosecution under the Act. In view of the Department's publicly stated intentions we believe that farmer reaction to bar public access is unwarranted. However if events prove otherwise, PANZ would support initiatives to have the Act amended.

Sea coast

Fall-out over NZ Coastal Policy

Since publishing our criticism of aspects of this policy in *Public Access No. 4*, Arnold Turner CMG, formerly Presiding Member of the Board of Inquiry wrote to PANZ criticising our position on the policy as "unfair, unbalanced and misleading". Judge Turner pointed out that the Board improved access provisions by adding requirements to the draft policy for enhancing public access to the coastal marine area. However he confirmed one of our criticisms that the policy also allows local authorities to *restrict* public access on the basis "that this has always been the case, and that they will always remain open to requests from private interests to do so". Judge Turner went on to justify elevating from "taking account" the principles of the Treaty of Waitangi, as prescribed in the Resource Management Act (RMA), to one of "recognising and facilitating" the special relationship between the Crown and Maori, by stating that the policy confines this to lands of the Crown. He requested that we "publish this letter in full...and let me know when you have done so".

We replied that our concern with the policy is over *aspects* of the policy, not the policy as a whole. Therefore we did not attempt to be 'balanced'. We acknowledged that the Board of Inquiry extended the access provisions of the draft policy, however that is not the point of contention. We are concerned about improper weighting being given to some requirements of the Resource Management Act (RMA) in relation to others which should receive greater weighting, in particular s 6 (d). This requires recognition and provision of the maintenance and enhancement of public access as a matter of national importance.

In regard to the alleged ability of local authorities to restrict public access this is the nub of our concern with the policy. The RMA for the first time introduced into planning law the maintenance and enhancement of public access as a matter of

national importance. That provision did not exist under the former Town and Country Planning Act. That is why, in an RMA environment, past attitudes and practices of local authorities to public access should not be reinforced by national policy.

Judge Turner responded again by restating his points, rather than acknowledging anything in our reply to him, and concluded by requesting again that his first letter be published in full. "If that is not done, it will be confirmation that your organisation is misleading the public over the issues in question".

We believe that the summary above fairly reflects the nature of his concerns and we do not intend to accede to what amounts to a demand that we publish his letter. We believe that Judge Turner has missed the point of our published criticisms of the policy and has provided no legal justification for the policy deviating in a substantial way from the wording of the RMA.

We have also received a response from DOC which restates what is in the policy but does not address our concerns about the relative weighting of policy matters. DOC confirmed our concern that the policy in effect rewrites the RMA by stating that "the five exceptions [to unrestricted access] take account of other matters which the Act and practicality suggest should take priority when the circumstances arise".

PANZ is seeking advice aimed towards causing review of aspects of the policy that are detrimental to public access. Donations to our Coastal Access Fund have made this possible.

Regional Coastal Plans

Following Government's adoption of the New Zealand Coastal Policy Statement, Regional Councils are now obliged to prepare regional coastal plans.

PANZ has inspected two of these and finds Council/Maori 'equal partnership' policies promoted at the expense of other matters in the RMA, in particular public access. This appears to be based on dated opinion from the Parliamentary Commissioner for the Environment. PANZ is drawing to the attention of Councils the matters raised during the debate over DOC's 'Partnership Plan' and the, what we contend, 're-legislation' of the RMA that has occurred in the New Zealand Coastal Policy Statement.

Following is a schedule of submission dates for each regional coastal plan to assist supporters wishing to have their say on the adequacy of public access and other provisions. Dependent on how individual councils have interpreted their responsibilities, relative to the high water mark, there may not be provision for land access/the Queen's Chain in coastal plans. If not in coastal plans, policies for public access should be contained in 'regional plans' which are also open for public submission.

Coastal resource rentals

In June the Ministry for the Environment released a discussion document entitled *'Resource rentals for the occupation of coastal space'*. This contained arguments for and against rentals being charged for such things as boat sheds, marinas, marine farms, moorings etc. The review is concerned with the *exclusive* use of coastal space, which is owned by the Crown.

The Minister for the Environment appointed former Gisborne MP Wayne Kimber to consider all relevant matters and to receive public submissions, which he has done, and to report with recommendations to the Minister. Government is yet to make a decision on his recommendations. Existing regulations that set charges for occupation of coastal space are being rolled over to allow time to implement the findings of the review. PANZ made a submission on aspects of the review.

> We believe the vast majority of New Zealanders consider that the coastal area is a precious and special resource quite unlike any other environment in New Zealand. It is special not only because of its physical character, but because, with only a few exceptions, the Crown is owner on behalf of all New Zealanders. This provides a unique opportunity and responsibility to maintain the resource as public commons.

Unfortunately up until the present the coastal Queen's Chain and foreshores in particular have been regarded as 'free last-frontier' in the eyes of many private users. This has resulted in ad hoc development and use which can seriously detract from the natural character of the coast and detract from the attractiveness for other uses and users. This has also led to the exclusive occupation of portions of the coast, to the exclusion of the public.

We do not believe that total reliance can be placed on the resource consent process to maintain the integrity of the coast. Rental policy must be designed to reinforce the purposes of the Act, not establish pressures that may conflict with its intent.

In general terms we believe that the coast, as a public commons, must be managed for the greatest good for the greatest number of people. Anything that encourages private

Regional Coastal Plans

Reg. Council	*Notified*	*Submission due*
Taranaki	1 July 1994	2 Sept. 1994
Wellington	29 June 1994	30 Sept 1994
Otago	July 1994	31 Oct. 1994
Waikato	yes	18 Nov. 1994
Canterbury	July 1994	20 Nov. 1994
Hawkes Bay	yes	16 Dec. 1994
Manawatu-Wanganui	13 Aug. 1994	16 Dec. 1994
Bay of Plenty	mid Nov. 1994	late Feb. 1995
Southland	early Dec. 1994	March 1995
Northland	mid Dec. 1994	March 1995
Auckland	early 1995	?
West Coast	mid 1995	?

Sea coast continued...

occupation or change of use to the exclusion or discouragement of the public at large must be discouraged. There must not be any presumption or encouragement created that private occupation and development is acceptable per se, rather remaining an exception dependent on passing the tests established by the RMA.

Where occupation is permitted, the Crown, on behalf of the public, should be compensated for loss of coastal amenity and public rights of use and enjoyment. That money should be available for the better management of the coast in the interests of anyone. We strongly support the concept that private occupiers should pay rentals for use of this public resource. They are getting privileges, actually or potentially, at the expense of non-privilege holders. They should pay. The question of scaling rentals, dependent on the nature of use and user is another matter, which we touch on below.

It is useful to equate publicly-owned coastal space with other public assets like national parks and reserves. In the latter cases commercial occupation can be permitted, as the exception rather than rule, on terms that do not breach the legislative imperatives under which these lands are managed—to be preserved as far as possible in their natural state, without impinging on public rights of use and enjoyment. Private occupiers and commercial users have to pay for the privilege.

In the interests of equity the Crown must be consistent in its policies for all publicly held lands and waters. No state 'subsidies' should be created on one category of Crown estate relative to the true costs on private lands.

We believe that resource rentals are essential for the following reasons—

- This would force consideration of land-based alternative sites.
- The absence of rentals will encourage privatisation and trading of property rights. For instance we have witnessed the holders of boat shed licences capitalising on low rentals by inflated sales of their structures. Low rentals is complemented by the absence of rates. Lack of overheads, excepting shed maintenance, encourages unauthorised changes of use to temporary of even permanent dwellings and commercial uses. Although in violation of their licences our observations are that in the majority of cases they get away with it because the authorities do not have the will to enforce the terms of the licences. This is one of our reasons for our scepticism at total reliance on consent and regulatory processes.
- The public should be compensated for loss of public access rights.
- The public should be compensated for loss of amenity values and lost opportunities for alternative uses.
- The public can reasonably expect a monetary return for use of a public resource so that there is an ability to do compensatory management of the wider coastal environment. This could include funding alternative provisions for public use (e.g., 'Queen's Chain' purchases, facilities) or the restoration of degraded locations.

We believe that rentals should be scaled according to whether it is a commercial, private, or community user and the degree to which the public is excluded from the site. Commercial occupiers should pay the highest scale of rentals, less by private non-commercial occupiers, and less again by community and club recreational occupiers.

Waivers of rental could be granted within each of the above three categories dependent on the degree of public benefit provided by the occupier. The less the direct, on-site public benefit the higher the rental. If no benefit then no waiver.

If any supporters wish to discuss our position please contact us.

Conservation estate

DOC's 'Visitor Strategy'

In September DOC released this document with the aim of "promoting discussion and obtaining feedback to enable DOC to set the broad direction it should take in managing the provision of appropriate visitor services without compromising conservation values".

This follows the release of a joint New Zealand Tourism Board-DOC paper '*New Zealand Conservation Estate and International Visitors'* last year which looked at whether New Zealand's major natural attractions and walking tracks have the capacity to cope with projected increases in international visitors of 3 million by the year 2000. Predictably, this industry-driven review recommended more back country track development, and regulation of use, so as to accommodate greater numbers of visitors. In part, commercial activity is seen as a way to "enhance the revenue base of DOC".

The tourism industry, without consultation with the domestic users of such areas, and with help from massive government subsidies, has actively promoted increased visitation in fulfilment of its own growth projections. The authors of the Tourism Board-DOC paper see the conservation estate as merely a "backdrop of nature" for the "adding of attractions and activities...which is the key to maximising the economic benefits from tourism". They conclude that "with careful planning, management, sensitive development of facilities and services, and appropriate investment, the conservation estate can meet the growth projections for international visitors". The development they have in mind are more "Milford Track style developments which have composite guided walks, meals, accommodation and transportation options [which] add [$] value to the natural attractions".

DOC's visitor strategy is more of the same. The summary of the paper starts by defining "visitors" to include the clients of concessionaires as well as the recreational public. This is consistent with reoccurring fudging by the Department and industry of the legislative distinction between 'recreation' and 'tourism'.

DOC is charged under the Conservation Act with "fostering" recreation but only "allowing" tourism. Clients of concessionaires are an inherent consequence of a tourism industry. If you "foster" such visitors you also "foster" the industry!

Conservation estate continued...

Otago Daily Times, September 7, 1994

The overarching principle adopted by the strategy is that "the provision of appropriate visitor facilities and services...will be in order *to meet visitor preferences* and protect these areas". There is no weighting suggested as to which objective has greater weight, whereas the legislation clearly establishes that protection must take precedence. As 'visitor' is inclusive of industry, it will be the industry's preferences that will prevail. As a concession to the natural environment, "*some* areas will be protected to ensure that they remain in a natural state". DOC is currently charged with preservation of *most* areas under its control.

Access

"Access over areas managed by the Department *should normally* be free of charge...". Such a principle completely ignores existing statutory guarantees that there *shall* be free public access. It is a statement of departmental intent which challenges a fundamental precept behind public lands. PANZ believes that public access must always remain free of charge. Payment for services and use of facilities is a separate matter.

"...access may be controlled to ensure safety of visitors or to protect the environment". Safety considerations are advanced as a basis (pretext) for curbing public access. Such a principle conflicts with a 'visitor safety and heath' principle which is— "the department will provide visitors with information on the types of risk present. But elements of risk will always be present in nature and *visitors are responsible for their own decisions*." The latter sentiment recognises a basic tenet of the freedom of the hills and is one PANZ heartily endorses.

Experience from around the country suggests that 'protection of the environment' is increasingly used as a basis for restricting public access to the outdoors through discretionary judgements by DOC staff. PANZ is of the view that protection of the environment is the primary consideration for most areas of public lands, however where control or exclusion of public use is genuinely necessary this should be done through a special status being created for particular areas. In the very small number of areas where prohibition or control of public access is necessary, 'special areas' in national parks, nature reserves and wildlife sanctuaries can be gazetted. Such a process is 'transparent' and open to public review.

There is no necessity to create broad discretions for officials to play 'God' with personal liberties.

For many decades outdoors' people have served the community through the Search and Rescue Organisation and safety education. We don't need cash-strapped DOC bureaucrats making value judgements that impinge on individual freedoms, overseen by an industry primarily driven by the pursuit of profit and commercial advantage.

An indicator of changing attitudes comes from within the farming community where increasingly 'the environment' is being used as a pretext for barring public access, particularly when farmers are involved in commercial walks or wildlife viewing.

User pays

"The Department will *generally* charge for facilities and services provided to specific visitors or groups of visitors. However, a discount may be offered in some circumstances. As a facility or service becomes more exclusive to a particular visitor or group of visitors they will be required to pay more of the costs involved".

Private sector

"A variety of organisations, both commercial and non-commercial, will provide facilities and services for visitors that meet conservation objectives and appropriate standards". The Department is opening the door to commercial providers of such things as public walking tracks on public lands. A loophole in the Conservation Act would allow non-DOC providers of tracks to charge for public access, whereas there is an express prohibition on DOC from doing so.

Conservation estate continued...

prohibition on DOC from doing so.

Treaty Partnership

"The Department will consult with iwi and develop working relationships/partnership *to ensure* that *visitor activities*, facilities and services *are in harmony with Maori conservation goals"*.

This policy highlights the discrimination and disadvantage non-Maori are liable to suffer from DOC's misguided 'partnership' policies. It is the conservation goals specified in the Conservation, Reserves, and National Parks Acts that must continue to moderate public use, not the goals of one particular sector interest.

Suggestions for increasing funding for visitor services

These include charging for access to road end sites, extending the range of visitor charges, extending the range of services and facilities, seeking more revenue for conservation *from Vote Tourism* (not from Vote Conservation), and introducing a arrival charge for international visitors. A notable omission is any suggestion of higher charges for commercial concessions!

Copies of the Visitor Strategy are available from DOC's Visitor Services Division, PO Box 10-420, Wellington. Submissions close on Monday 16 January 1995.

The thrust towards commercialisation of public lands is in large part driven by inadequate funding for DOC, and partly by an avaricious tourism industry. Yet the Minister of Conservation refuses to publicly acknowledge that the Department's budget has been cut four years in a row. There has been a 20 per cent cut in real terms since DOC's inception in 1987. If that were rectified, many of the threats above would disappear or subside.

What you can do

• Make a submission on DOC's 'Visitor Strategy' by January 16, 1995—to P O Box 10-420, Wellington.

Ministry of Commerce jumps on bandwagon

In September the Ministry of Commerce released a commissioned report from Ernst and Young (accountants) which proposes that DOC charge "market rates" for tracks, entry, and facilities. The charges would be "to assist preservation of the whole conservation estate". The proposals were spurred by the department's current funding crisis.

In a commentary on the proposals, DOC's Director of Visitor Services, Andrew Bignall, was reported as saying "visitors should pay more for services provided". "He emphasised that market rates would apply only to the great walks and only during the off season" (*ODT*, 1/9/94). What Mr. Bignall did not say is that there are no limits on which tracks become "great walks", and the 'seasons' are undefined. Some obscure and lightly used tracks have suddenly been developed and promoted as "great walks".

PANZ believes that the ideology of access and entry charges over public lands must be rejected in total. There is no room for compromise. If the principle becomes established, the pressures on DOC, and from the commercial sector, will be so great that there will be no limit to the application and scale of track or other access/entry fees. Use of the outdoors will be rationed by the ability to pay.

Access News

Please send clippings (with date and source) to PANZ

A 'Rival for Milford'?

NZ Herald, September 14, 1994

Fairthorne Leisure, an Auckland-based company plans to develop a 42 kilometre 'rival to the Milford Track' in the southern Coromandel Ranges. 28 km would utilise existing tracks, the balance would be new. The company would do the track development and maintenance. The area is conservation park administered by DOC. Two lodges would be constructed, with sleeping accommodation for 28 walkers in each. The guided walk will cost between $800 to $1000 per user. The track would also be open to non-paying walkers, using DOC accommodation.

DOC's Waikato land use manager, Greg Martin, was reported as saying that "there is a possibility the department may become involved in a form of partnership with Fairthorne." "In the Coromandel...if the department decides to go ahead with the idea, it will be a true partnership, with dollars upfront from us". "Part of the department's mandate is to *foster* tourism, and as long as the conservation values of the area are not at risk we don't usually have problems" (our emphasis).

Private beachfront—Waiheke Island

NZ Herald Real Estate, October 26, 1994

One of the island's premier properties attracting buyer interest identifies with the best of beauty and serenity the island has to offer. Piemelon Bay is recognised among the island's exclusive north-facing sandy beaches extending nearly a kilometre across the face of rolling farm country.

Dominating the bay is an outstanding Spanish home within 100 m of the shoreline. The private beachfront residence is the focal point of a farm and lifestyle property covering 234 ha. The property is up for sale by tender.

Piemelon Bay is acknowledged as one of Waiheke's elite private domains.

Advertisement for the above property read— "Your own private kilometre long north-facing beach...private retreat...brilliant white sandy beaches, clear blue waters, absolute serenity. Let the magic work for you!

ARC plans to seize *Zeus* and *Phoenix*

Gulf News, Waiheke Island, September 30, 1994

The Auckland Regional Council says it will seize the vessels Zeus and Phoenix if its application to the Planning Tribunal for enforcement orders is successful.

In a strongly worded statement this week the ARC said it was also considering a separate prosecution of the vessels' owner, Gary Moulton, through the district court.

"This council has spent more than two years and several thousand dollars in an attempt to persuade Mr. Moulton to face up to his responsibilities," said environmental management committee chairwoman Patrica Thorp.

"We now have no choice but to ask the Planning Tribunal to take this unsatisfactory matter a step further. If granted, and Mr. Moulton still refuses to budge, we will be forced to evict him and take possession of and remove the vessels to a position where they will not occupy the foreshore/seabed."

Cr. Thorp said the Zeus would be taken to a commercial slipway while the Phoenix would be placed on an ARC mooring.

"The foreshore and seabed are intended for use by the entire public and are respected and protected under the Resource Management Act," she said. "We cannot allow anyone to interfere with the public's use and enjoyment of the coastal area, otherwise it can only be to the detriment of us all."

Cr. Thorp said staff and legal advisors were now preparing evidence for the Planning Tribunal.

The manager of coastal resources, Hugh Leersnyder, said that while abatement and enforcement notices were a matter for the tribunal, there was also provision under the Resource Management Act to initiate prosecution in the district court.

Mr. Leersnyder said legal advice was still being taken on what form a prosecution might take.

In a summary of the regional council's position the statement, released on Wednesday, said the Planning Tribunal had issued enforcement orders against Mr. Moulton in October 1992 requiring him to move his vessels from Anzac Bay, and again from Putiki Bay in November 1993.

"More recently, following his return to Anzac Bay, an abatement notice was issued on 31 August 1994 requiring Mr. Moulton to remove three vessels (Zeus, Phoenix and Mary's houseboat) and any associated structures from the foreshore of Anzac Bay by 7 September

This request had not been met and Mr. Moulton had since appealed to the Planning Tribunal against the abatement notice on the grounds that section 418 (6A) of the RMA allowed moorings occupied prior to 1 October 1991 to be occupied until one year after a Regional Coastal Plan becomes operative.

"The council has reason to believe Mr. Moulton does not satisfy this criteria as laid out in the Act," said Cr. Thorp."

"Aotearoa Adventure Trail— A Protected Corridor of Land"

(Material contributed)

The "Aotearoa Adventure Trail", from Cape Reinga to Bluff, is presently being planned by three experienced, enthusiastic and committed people from New Zealand, Switzerland, and The Netherlands.

The plan is to complete a challenging end-to-end journey of Aotearoa/New Zealand's back country by foot, mountain bike, and sea kayak through the most natural settings possible.

The journey will begin at Cape Reinga on 6 February, 1995 (Waitangi Day) and finish at Bluff in mid-May.

Apart from the personal physical challenge, the aim is to raise awareness for the need to adopt and protect the Aotearoa Adventure Trail ("AAT").

Such trails as the Appalachian Trail and the Pacific Crest Trail in the USA, and the Pennine Way in England, are testament to the benefits of long-distance trails. A recognised and established end-to-end trail of New Zealand is an exciting prospect. The hope is that the expedition will be the catalyst to make this a reality.

The Appalachian Trail in the Eastern United States covers over 3,500 km's and over 98% of the trail runs through a "protected corridor" of land traversing 14 states. In the 1960s, the Senate approved a plan to purchase land adjacent to the trail to ensure that the Appalachian Trail would not be in danger of land access problems. At the time, only 60% of the Trail was protected (National Parks and Forests).

The AAT's mission: "To establish a protected corridor of land that extends from Cape Reinga to Bluff, which will provide the public an opportunity to commune with nature, to be involved with Aotearoa's natural assets, and provide a place for individual growth and appreciation of the outdoors".

The expedition team realises that the hard work will not just finish at Bluff in May, they are committed to seeing the AAT become a reality.

If you would like more information on the AAT, please write: AAT, 157 North Street, Timaru.

PANZ has reservations about a 'AAT'. Some of our Trustees have memories of minimal results from great efforts to establish a National Walkway from one end of New Zealand to the other. We believe that efforts, and very limited public monies, would be better expended on protecting and managing existing public lands, and providing recreational opportunities where they are most needed—close to where people live.

Graham's Bush Walkway closed

Otago Daily Times, October 19, 1994

The Editor,

The lower section of the Graham's Bush walking track to Sawyers Bay [Dunedin] was closed by DOC from 10.9.94 to 1.10.94. The reasons given was for lambing. This track has not been closed before. I believe that the closed section of the track follows a legal road, except for a very short section. During the period of closure there were no sheep on or near the track until the last day of closure. They were fenced from the track and on the other side of the valley from the track. I would be interested to know why DOC closed the track when no sheep were near and as it is mostly a legal road.

Alan J. Middleditch
Dunedin

[The Department of Conservation Dunedin field centre manager, Chris Stewart, replies: "The lower section of the Graham's Bush walking track was closed for less than three weeks at the request of the new owners of a section of private farmland across which the track passes. Through managing their stock differently, they hope that closures for lambing reasons Will not be required in future".]

Otago Daily Times, November 2, 1994

The Editor,

The Department of Conservation has not answered Alan Middleditch's question (*ODT*, 19.10.94) —why did it decide to close the Graham's Bush Walkway when there were no sheep,

let alone "lambing", near it? The inference to be drawn from the DOC's response is "because a landowner requested it". But is that good enough reason? DOC is charged under the NZ Walkways Act 1990 with providing unimpeded foot access to the countryside, over both public and private land. If the department acts to impede public access without good reason it is bringing itself into disrepute and laying itself open to review of its actions through the courts.

Bruce Mason, Public Access New Zealand

[The Otago Regional Conservator for the Department of Conservation, Mr. Jeff Connell, replies: "A portion of the lower section of the Graham's Bush Walkway crosses private land over which there has been no formal access agreement. Where privately owned land forms part of a walkway, it is common for conditions such as closure for lambing to be included in agreements with the landowner. In the case of Graham's Bush there are new owners of the private land involved, and as a result of discussions with them we are hopeful closures can be avoided in the future."]

Still no answer to the question! Anyone else want to have a go?

Parts of Kaituna closed to public

Daily Post, October 31, 1994

The Rotorua District Council has permanently closed parts of the Kaituna River to members of the public.

The top gorge section, popular with whitewater rafters and kayakers, would remain open, the council's director of environmental services, Mr. Bryan Hughes, said.

However, the river for several kilometres below the Trout Pools was now off-limits to the public for safety and cultural reasons.

Here the river flowed through a deep, narrow gorge surrounded by Maori land.

The gorge was highly dangerous and was not used by the raft companies, Mr. Hughes said.

It also contained most of the burial sites which made the river sacred to the tangata whenua.

There was also little physical access to most of the river in the gorge, which claimed the lives of at least two people who attempted the trip in the last few years.

A meeting is to be held this week to discuss controls which are to be imposed on the raft companies and kayakers who can continue using the upper section of the river, Mr. Hughes said.

These controls were to be in place within one month, before the peak Christmas tourist season started.

Meanwhile Ngati Pikiao's runanga was to meet today to discuss its response to the district council's heritage order over the river, the runanga's operations manager, Mr. Kepa Morgan, said.

The runanga was still waiting for government approval to gain heritage protection authority status.

This would enable them to place their own order on the river, with the power to ban all or any users if they wished.

However, they were pre-empted by the council's order, which specifically protected public access to the upper part of the river as well as recognising its significance to iwi.

Any subsequent order can not nullify the original one.

Council puts Kaituna under wraps

Daily Post, October 29, 1994

[The Council's Heritage Order] was...hoped to resolve the conflict between commercial rafting companies and some Ngati Pikiao, who felt rafting and kayaking compromised the spiritual significance the river held for the iwi.

In April these concerns led Ngati Pikiao's runanga to apply for heritage protection authority status from the Minister for the Environment. This would give them power to place their own heritage order on the river.

The MP for Rotorua, Mr. Paul East, has praised the council's action.

He said there was a need for an authority to control the river, but he had not supported the Ngati Pikiao runanga's move to do this.

"There is no doubt many New Zealanders would be excluded if an iwi group had total control over a river or lake. Our waterways are there for the enjoyment of all New Zealanders."

It was fitting that a democratically elected authority should be the controlling body, he said.

Ngati Pikiao's runanga are the first iwi group in New Zealand to apply for the status of a heritage protection authority, according to a spokesperson for the Ministry for the Environment.

The district council's move also set a precedent because it was the first time a heritage order had been used in this way.

No Queen's Chain on Kuriwao endowment leases

Otago Daily Times, October 13, 1994

The Editor,

The Government's decision not to include a provision within the Kuriwao Endowment Lands Act requiring the Queen's Chain to be laid off along important South Otago rivers has again exposed the National Party's determined lack of commitment to the concept of secure public access to public waterways. But that is not the end of the matter. Central Government has simply passed the responsibility for providing for the wider public interest in those lands to the Otago Regional Council. The ORC operates under the Resource Management Act, and is required by Section 6 of that Act to recognise and provide for "the maintenance and enhancement of public access to lakes and rivers". That is described by the Act as a Matter of National Importance.

Regional Council chief executive Graeme Martin (*ODT*, 16.9.94) has given assurance about the conservation and recreation values of the lands concerned but does not want to "ride roughshod" over the rights of existing leaseholders. The reasonableness of that position depends to a very great extent on the Regional Council's commitment to cater for the wider public interest. Clearly the ORC must also ensure it does not ride roughshod over the public's interest in improved public access to waterways and fisheries. Those do not at present exist as public rights within the Kuriwao Endowment lands but should be provided for in the event that the lands are sold out of public (Regional Council) ownership. In that event it would seem entirely reasonable to trade the requirement for a Queen's Chain for the additional benefits of freehold title. That way no one's rights or interests get trampled.

Labour's Pete Hodgson put that argument to Parliament prior to the Act being passed and confirmed Labour Party support for the Queen's Chain concept. He also pointed out that laying off the Queen's Chain on rivers such as the Catlins and Waipahi, which flow through the 16,000 ha of endowment lands, would represent less that 1% of the land concerned. Sir

Robin Gray's reaction to Mr. Hodgson's speech was that "There are plenty of other rivers with the Queen's Chain"! Perhaps Sir Robin [MP for Clutha electorate] would like to explain how he can justify such a blatantly elitist remark when outdoor recreation, including angling, has such a strong following in his constituency.

Niall Watson

Manager, Otago Fish and Game Council Dunedin

[Sir Robin Gray did not wish to comment on this letter - Ed]

Road stopping opposed

Guardian, Motueka, July 18, 1994

The Nelson Conservation Board has opposed a proposal to stop part of a legal road in Honeymoon Bay, Kaiteriteri.

"The unformed legal road gives access along the sea. It is public property, part of the Queens Chain, and should be kept for public uses said Board Chairman, Bill Winstanley.

The Tasman District Council has advertised its intention to stop part of the public road. The stopped portion is intended to become the property of Mr. J F S Baldwin.

"The Council have no reason to support the road stopping", said Mr. Winstanley. "Our enquiries revealed it was because a building had been extended onto the legal road".

"That is a reason for removing the building, rather than for stopping the road," he said. "This is a clear message from the Council that it is alright to encroach on public land, and I do not agree with that view".

Mr. Winstanley went on to say. "I can see a major advantage to Mr. Baldwin in obtaining private ownership of a prime piece of public land, but there is no public advantage, only public loss".

Objections to the proposal close[d] on 12 August 1994.

Prince faces army of angry walkers

The Press (ex The Observer), October 19, 1994

Britain's walkers are on the war-path against landowners, including Prince Charles, who do not allow them right of way. Polly Ghazi reports—

Prince Charles, along with several peers of the realm (members of the nobility) and hundreds of farmers, will be targeted for walker-hostile behaviour during a "year of action" to revive Britain's ancient rights-of-way network.

The country-loving prince has incurred the wrath of the Ramblers' Association, which represents Britain's 12 million walkers and hikers. The association launched its campaign last Wednesday, its 60th anniversary, with the aim of forcing the clearance of 600 public footpaths blocked or ploughed over by landowners.

Most of the paths are in remote countryside and run across some of the wildest and most beautiful landscapes in England, Scotland, and Wales. One notable exception is the Thames footpath, whose recalcitrant landowner is the heir to the throne.

For decades walkers have been of officially denied access to Duchy of Cornwall land (owned by the Prince) alongside the Albert Embankment in London, which the ramblers assert is a public right of way.

Access to Lacks Dock, opposite the Tate Gallery, is blocked by a high wall. Last year, at the Duchy's insistence— and taxpayers' expense— a second fence was erected 200 metres to the west, between the prince's land and the new headquarters of MI6.

Since then, a new section of the path has been built outside the MI6 building and the Duchy has finally entered negotiations with Lambeth Council to allow the two walls to be knocked down — as long as Lambeth pays to renovate the path. A Duchy spokeswoman said an agreement would probably be signed "soon".

However, David Beskine, assistant director of the Ramblers' Association, is sceptical. "They've been close to signing agreements back in the 60s— we'll believe it when it happens. It seems our spies are less scared of letting the public on their land than Prince Charles is." The attitude of the Duchy, which refers to people straying on to Lacks Dock as "trespassers" is typical of landowners across the country, says Mr. Beskine.

In the county of Suffolk, where few rights of way have been legally recognised because of the strength of landowners' influence, the association will lobby county councils to create six new public pathways.

"In the early 50s, when county councils were mapping rights of way, Suffolk villages still had a distinctly feudal flavour," says John Andrews, chairman of the Suffolk Ramblers. "People wouldn't think of doing anything to displease his lordship. He was often a major employer as well as landowner, and there was very little political will to get ancient rights of way legally recognised."

Only one new public right of way has been created during the Ramblers' Association's existence. This was in 1988, when a footpath was created along one edge of Wychwood, a piece of woodland near Oxford, after years of wrangling with the landowner, Lord Rotherwick. Negotiations are still continuing over His Lordship's claim for $3.75 million in compensation.

The Ramblers' Association hopes to achieve 12 new footpaths during its campaign. This will involve mobilising thousands of members to lobby local authorities to use their statutory powers to issue compulsory footpath creation orders. But the main effort will be on clearing the hundreds of kilometres of legal rights of way obstructed by landowners.

"A survey by the Countryside Commission showed that, during a typical (3 km) walk along a right of way, you would have a 70 per cent chance of encountering an obstruction put there by landowners," says Mr. Beskine.

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