

# New Zealand on the road to repression?

**'Public Access'**

No. 10 October 1998

ISSN 1172-3203

The headline may appear startling coming from an organisation with a focus on outdoor recreation. What business do we have in making such a sweeping statement, in effect raising the possibility of a severe erosion of democracy in New Zealand?

Public Access New Zealand (PANZ) was launched in 1992 full of hope that the voices of the people still mattered in New Zealand - that our political institutions and processes, and the bureaucracies that service them, still subscribed to democratic ideals of equality of standing for the individual, as well as basic standards of honesty in public affairs. In 1993 our 'Queen's Chain' campaign seriously reminded Government that they cannot ignore the will of the people, the weight of popular opinion.

In a rare turn-around for a governing party, they were forced to reverse their plan to allow the leasing of the 'Queen's Chain' to private interests. Seasoned political commentators identified this as an issue which had a bearing on the outcome of that election. This was no small feat for a small, embryonic organisation with almost no resources to back it, other than our knowledge, determination, and popular support.

How New Zealand has changed since! Our sense of betrayal persists. Within months of the 1993 election the Government broke its promises, as it has in so many areas of public policy. For the first time in New Zealand's history publicly owned water margins can now become privately occupied to the exclusion of the public.

When dealing directly with the proponents it was a revelation to us to witness the determination of politicians and officials to have their way, no matter what the interested public thought. This was a chilling insight into how the leadership of this country has changed. The wise and politically experienced may observe, well, this is politics, what else can you expect? Perhaps, but our experience from earlier political involvements was that, while we often met plain old-fashioned nepotism and expediency, negotiations were usually conducted with an air of dignity and fair-play.

Now those in governance view the electorate with ill-concealed contempt. They, and the market-forces theorists who exert most influence, know best. They alone have found the one true direction. This has the characteristics of a fundamentalist religious order, but without the sincerity necessary for it to be called a faith. Other viewpoints are cynically dismissed, deemed to have no merit. Just about every organ of Government has been so infected.

A particularly disturbing aspect of the present malaise is that it has spread into the broader community. Obvious self-serving interests like the Business Roundtable claim to advance policies that, for instance, give 'choice' to the under-privileged and disadvantaged (while giving far greater 'choice' to themselves), and even 'conservation' of public lands whilst depriving

the owner-public of the benefits. It has also been alleged that some Wellington-based lobbyists can be captured and persuaded to support legislation which is contrary to the objects of their own organisations. PANZ hasn't found this easy to take, but it has better prepared us for the present unsavoury age. We can only rely on those who act in accordance with their words, not by words alone, inside and outside of Parliamentary circles.

The consolation for PANZ has been the realisation that we are not alone. In just about every sector of public affairs we hear daily expressions of despair and outrage at Government's actions and indifference. The country is now divided by ideology and self-interest.

The greatest danger is that we may become an "unconscious civilisation", a phrase coined by Canadian writer John Ralston Saul to describe the mindsets of the perpetrators and the victims of corporate influence acting at the expense of individual democratic rights. Such a civilisation is characterised by decision-makers' wilfully excluding relevant information, information which should have a bearing on their decisions, but which is set aside because it conflicts with their vision. This has necessitated a protective wall of insubstantive techno/managerial-speak (the role of 'communications managers'/spin doctors). The perpetrators end up believing their own illusions. The rest of us find the whole package incomprehensible, and are swept aside by the momentum of change.

Saul was describing an international phenomenon that is sweeping the western world with New Zealand at the forefront. Some still may not realise that we are at the cutting edge of the market-forces onslaught. We appear to be the World's laboratory guinea pigs for field testing of the latest pestilential ideology, one that Saul thinks is more akin to Mussolini's fascist Italy than any democratic traditions.

An additional phenomenon in New Zealand, is the ascendancy of a parallel 'Treaty' industry of Maori grievances to the extent that all the major political parties are committed to appeasement through transferring public resources to the aggrieved, irrespective of the validity of claims. A global guilt

## Contents

Road to repression?	1
Outdoor Recreation Associations	2
High country up for grabs	4
Protective covenants	4
Roadcorp coming soon!	5
Ngai Tahu – a done deal?	6
Access News	7
New web site	8

## **'Road to repression' continued...**

consciousness has been created whereby measures to placate tend to be uncritically adopted, and scorn is heaped upon individuals or organisations who dare to question.

Our political process was badly let down by Labour's commitment to supporting the legislative enactment of the Ngai Tahu settlement *before* they had seen the reported back version. Earlier the nation witnessed the chief Ngai Tahu negotiator threatening "war" if Parliament dared to amend his agreement with the Crown. Such a threat, and the lack of defence of our Parliamentary process by the Government, shakes at the foundation of our democracy.

Though the actions and example of successive governments, community of interest is almost dead. Self-serving interests are daily rewarded by the actions and omissions of Government. No wonder there is a deepening sense of alienation, of disenfranchisement. It appears that no matter which way we vote, and what promises are extracted from politicians, they go their own way and disregard the wider wishes of the electorate.

The challenge for PANZ, and those we seek to serve, is not to succumb to the apparent hopelessness of the present. We must continue to analyse the actions of Government, and other bodies set up to advocate somewhat similar interests to us, and to speak out forcefully whenever necessary. The popular will must prevail eventually.

Alternatively Government will have to move to repress civil rights if it is to continue to enforce its unmandated views on a large proportion of the population. There are grounds for fearing that Government is sliding towards such a draconian state. The intention to introduce direct user charges as substitutes for centuries-old rights of freedom of movement under so-called road 'reforms' is the most glaring example to date (see page 5).

We need to be better organised politically so that greater force can be given to our concerns. To this end PANZ is an inaugural member of the Council of Outdoor Recreation Organisations (CORA). This is a new body set up to provide a large collective voice for recreationists in the political arena. It is interesting to note that the co-chairs of CORA appear to share our views on the current political situation.

CORA is not a substitute for PANZ. Our specialist knowledge is valued by the other member bodies and we are making a significant contribution to its work. That effort still needs to be funded by our supporters, as well as our commitments to tenure review in the South Island high country, watching road 'reforms' and the management of the public estate in general.

We are all living in difficult times, and PANZ is no exception. However we feel that we have a duty to all New Zealanders to persist in the face of adversity. Anything less would be a capitulation to the intolerable, and that we are not about to do.

## **Council of Outdoor Recreation Associations**

PANZ supports the aims and objects of CORA and thinks readers will be interested in a few of the sentiments expressed by CORA's Co-Chairmen at their 1998 AGM on 13 September. What follows are Extracts from their lengthy report.

It is vital that the outdoor sporting public jointly refine our arguments and intensify our lobbying to make sure politicians understand our viewpoint. And that we endeavour to keep them to their word.

The formation of the Council of Outdoor Recreation Associations of saw trout fishing, tramping, skiing, recreational canoeing, deerstalking, public access and salmon angling interests sitting around a table and discussing ways to achieve that numerically powerful voice. Estimates indicate 750,000 and probably nearer one million New Zealanders' outdoor interests were directly and indirectly represented.

The public outdoor sector has been like a slumbering giant but it seems at last it is awakening with the new council the catalyst and umbrella... The old issues are there or lurking such as the Queen's Chain, ethnic fishing rights as in the Wanganui test case and the Ngai Tahu bill, privatisation of public land in the high country and others. All require vigilance.

Frustratingly others have surfaced. One was a Business Roundtable proposal for all, including New Zealanders, to pay an access fee to public lands such as National Parks. This is totally contrary to our social and outdoor sporting traditions.

Another was the proposal for roading reform... In essence this would be a huge "access tax" on outdoor users whether trampers, anglers, hunters, or picnickers driving to their sport. Think of the mileage you do for your recreation. Again the group behind this was the Business Roundtable who proposed the concept two years ago.

A discussion document on the Resource Management Act showed a distinct free market, de-regulation flavour with no controls on development or on consideration of society or future generations. Under the guise of de-regulation, the proposals are alarming with respect to the public's environment.

Electricity reforms was another. Unfortunately and dangerously, there are a group of politicians who seem imbued with the free market ideology and are more concerned with representing that ideology than the public's interest or wishes.

The Ngai Tahu Bill was another.

However the most alarming aspect of these issues was the snub to democracy by politicians. Just recently Treaty Minister Doug Graham declared the decision of the Maori Affairs select committee would have had no influence on the final outcome that was decided on several months ago. The impression was that he did not care a damn for the New Zealanders who spent money and valuable time in making submissions. Frankly they were wasting their time it seems.

This is in spite of him telling the public at the time of negotiations with Ngai Tahu that they would have a chance to influence things at the select committee stage...

The behaviour of a number of MPs on the select committee was also a snub to democracy...arrogant and aggressive... and seemingly had no intention of listening and considering submissions that were contrary to their own opinions.

We had the situation on the Electricity reform where minister Max Bradford... decided on a course before the select committee had heard submissions and made its report.

## **'CORA' continued...**

They all come down to a "profits before people" philosophy.

Whether you look at the roading reform, trout farming, plans to charge New Zealanders entry to public lands, DoC removing public wilderness huts, tradeable water rights, electricity reforms which mean a free-for-all in building dams on trout and canoeing rivers, and others – they are all driven by the political free market lobby and the profit-instead-of-service syndrome.

This is the reality. Politics in our sport is simply "cause and effect". The sooner more and more realise that, the better! More must put their shoulder to the wheel of the common cause if we are to retain New Zealand's tradition of free and equitable access to the outdoors.

The challenge to the public and the council, its groups and other kindred organisations such as Fish and Game, are immense.

The brunt of the work has fallen on too few shoulders. That results in skilled, invaluable people becoming stressed, burnt-out and forced to reluctantly opt to the sideline. We cannot afford that. We all have to ask ourselves how much do we care about our sports. Our children's sports, our grandchildren's sports. Do we care enough to jot down some ideas on paper to post or fax back? Do we care enough to work together for the common cause?

If every member of each club affiliated to national organisations, spent a half an hour – just 30 minutes – every six months penning a letter to some editor, at some paper or magazine, on the issues confronting our sport, we would have little of the threats.

Select committee submissions are time consuming and can be expensive also. The Council, groups and individuals should always make submissions, perhaps written and at times verbal, if judged warranted. However greater effectiveness and better use of resources might be to shift priority to the public debating arena, such as letters to the editor of papers and magazines, opinion pieces and even initiating television current affairs investigations.

Stand together, develop our strengths and be counted.

A quote by a former US president Theodore Roosevelt has some relevant thoughts –

"The credit belongs to the man who is actually in the arena; whose face is marred by dust and sweat and blood – who knows the great enthusiasm, the great devotion and spends himself in a worthy cause; who at the worst if he fails, at least fails while daring greatly – Far better it is to dare mighty things, to win glorious triumphs even though checkered by failure, than to rank with those poor spirits who neither enjoy nor suffer much because they live in that grey twilight that knows neither victory nor defeat."

If we don't care enough, then the tradition of public outdoors as we've known it in the past over 100 years is at a crisis stage and that crisis is urgent. The late John F Kennedy once said-

"The race between education and erosion, between wisdom and waste, has not run its course - each generation must deal anew with the raiders, the scramble to use public resources for private profit and with the tendency to prefer short-run profits to long run necessities.

The nation's battle to preserve the common estate is far from run – the crisis may be quiet but it is urgent."

We believe the matter is urgent. New Zealand stands at the cross-roads, whether to choose "short-run profits" or "long run necessities".

The next year will be of particular significance if only for the single fact that 1999 – or even 1998! – is election year. This is the public's chance, once at least every three years. Because of recent anti-democratic trends it is a key election.

Council sees giving its outdoor recreation associations a higher profile for funding with the Hillary Commission and Lottery Grants Board as of high priority. Our preliminary research shows that recreation and especially outdoor recreation at the national level, has all but been pushed out the door by sport and high performance sport.

This is especially the case with the high level of rugby funding. It is ironic that a Commission named after New Zealand's greatest outdoor recreationalist, Sir Ed, should have so turned its back on outdoor amateur recreation, one of the key parts of our national identity. Even Hillary Commission surveys show that outdoor recreation – fishing, tramping, skiing, walking – have participation rates above sports like rugby, and league. Yet our sports get almost no Hillary support at that national recreation level.

We are preparing a delegation to the Hillary Commission to get the justified level of funding for outdoor recreation groups. We will also be advocating acknowledgement of the need to help fund protection and management advocacy of the outdoor lands and resource.

The Hillary Commission's priorities should be funding amateur recreation and sport ahead of commercial and professional sport.

Dr Hugh Barr & Tony Orman, Co-chairmen

*Tony is Past President of the New Zealand Federation of Freshwater Anglers and well known writer on the outdoors.*

*Hugh is a past president of the Federated Mountain Clubs*

### **Inaugural Participants:**

Canterbury Ski Association, NZ Deersalkers Association, NZ Federation of Freshwater Anglers, NZ Recreational Canoe Association, NZ Rifle, Rod & Gun Sports Association, NZ Salmon Anglers Association, Public Access New Zealand

### **The objects of CORA include –**

**Strong recreational user voice :** To promote the welfare and strength of its member associations, and outdoor recreation generally.

**Protection and Wise Management :** To promote the protection and wise management of outdoor recreation resources, and related natural environments, for the protection of intrinsic values, and for the benefit of recreational users, now and in the future.

**Public Ownership and Management :** To advocate the continuation in public ownership, with government responsibility for management, of all currently publicly owned outdoor recreation resources, and for the addition of further such resources to public ownership and management as the Council believes wise or appropriate. This includes working for a strong recreational user voice in the management of those resources.

**Public Access :** To work to retain free, egalitarian public access to, and use of, publicly managed lands, waters, and other resources, subject to wilderness protection and user conflict reduction considerations.

## High country up for grabs

After four years of on-again-off-again consideration by select committees, the Crown Pastoral Land Act was finally passed by Parliament in June this year. PANZ and other NGOs had vigorously opposed the primary intention behind this Act which is to free up pastoral leases for freeholding. During the final stages it was acknowledged that Government's fear of our lobby was the reason they deferred the Bill before the last election.

However our constraint on Government was not acknowledged with good grace. We were staggered to hear former Lands Minister Denis Marshall slang off at us in the House by claiming, on the 17th June, that when he had previously brought PANZ and others together in the Cabinet room to discuss the Bill "it was the most embarrassing confrontation I have ever had in my life"... "it came very close to causing me to throw the whole thing out and walk away from it". He implied that the "carrying on" of PANZ and FMC was the problem at this meeting. Whereas at the outset, the farming reps launched a sustained attack on us, egged on my Marshall in the chair, who made no effort to moderate proceedings so that common ground could be found. The tone of the meeting was so bad that the FMC, Forest & Bird and PANZ reps conferred over the pointlessness of the meeting and considered walking out.

It is too soon to know how the new Act will affect tenure reviews in the high country, many of which were well advanced under the old Land Act. Before the passage of the new Act, approximately 130 or 40% of Crown pastoral tenures in the South Island were voluntarily involved in the tenure review programme. More than 30 other properties had registered their i

Final agreements had been reached on 27 properties. Most of these reviews resulted in substantial natural lands being transferred to DOC and public access provided. Generally only the better farmland has been freeholded. PANZ has strongly supported this process.

As there are no transitional provisions in the new Act all uncompleted reviews now have to go back to scratch and start again under new rules which permit freeholding of any land "capable of economic use". Government argues that there are constraints on this within the new Act, however we are not so sure. We are seeking legal advice on the meaning of the Act with a view to getting the best possible results for recreationists in future tenure reviews.

Earlier this year PANZ made submissions on six tenure reviews in Otago and Canterbury, usually after field inspections (the official proposals and our submissions are viewable at our website). If the proposals carry over for approval under the new regime, most of these reviews will result in valuable public reserves and access provisions and more viable farming units –therefore wins all round.

PANZ wishes to acknowledge the helpfulness and cooperation of the lessees concerned. They are seeking constructive solutions to their farming problems while reasonably accommodating public aspirations. This is in marked contrast to the vociferous no-compromise clamours for total freeholding that we are accustomed to hear from the leaders of the High Country Committee of Federated Farmers and the High Country Trustees. It seems that most lessees will make up their own minds and will not have their livelihoods dictated to by anyone, whether that be from our side, or from some of their farming colleagues.

## Protective covenants

### Are they worth the paper they are written on?

*By Fish & Game New Zealand*

*Otago Manager Niall Watson*

(Based on article in 'Fish & Game New Zealand' No. 7 1998)

In recent years, there has been a lot of interest in low cost methods of protecting conservation values on private land. Conservation covenants have been strongly promoted as one answer by groups such as the Queen Elizabeth II National Trust and by Government. Covenants are endorsements on land titles which bind current and future owners in specified ways and so limit the normal freedoms a private landowner enjoys. Covenants are invariably negotiated with the freeholder or lessee and applied to the land title with his or her agreement. On the face of it, they are flexible, cheap, and easily established.

Covenants fit well with Government's current policy directions, including pursuit of the market economy. Government is strengthening private property rights on a broad front and is pressing ahead with the sale of public lands wherever possible. In this context, covenants appear a blessing. The ability to pass land into private ownership and to protect natural values or provide public access through covenants suggests that you can have your cake and eat it too.

That has the potential to get many conservation and recreation lobby groups, including Fish & Game New Zealand, into a comfort zone in disputes over retaining lands in public ownership or allowing public land to be privatised. Covenants appear to be the perfect compromise.

Also, covenants have caused Fish & Game Councils to start thinking about whether they actually need to own land to protect, for example, wetlands. Instead, they could simply buy properties, apply a protective covenant to the values to be protected and on-sell them. That appears to make sense, but there are risks.

The use of covenants to protect the public interest in land is untested and early results suggest the method is not particularly durable and is open to abuse through landholder non-compliance. Public Access New Zealand's researcher, Bruce Mason, has listed a number of significant problems with covenants as follows.

- a lack of political will to enforce conditions among covenanting authorities
- the legal rules relating to enforcement of covenant conditions through the courts are complex and uncertain
- to be enforceable covenants must be explicit and detailed
- the courts have the power to modify or extinguish covenants at any time under the provisions of the Property Law Act without any requirement to publicly notify the change
- compliance monitoring costs are often overlooked
- access covenants may be thwarted by land holder obligations under the Health and Safety in Employment Act

## **'Covenants' continued...**

The Otago experience of covenants is illustrated in three cases

### **Wildlife Refuge**

Fish & Game New Zealand Otago region owned a wetland property near Balclutha for many years. The area is also a gazetted wildlife refuge, has value in holding gamebirds during the hunting season as well as maintaining wetland habitat generally. The refuge was owned in conjunction with an area of farmland which was leased and generated rental income. When an adjacent wetland became available, the Council covenanted the wetland and swapped the whole property for the freehold title on the adjacent wetland. This was a good deal with low risk of drainage because the wildlife refuge is in a designated floodway.

### **Upland Game Hunter Access**

The Council has attempted to use hunter access covenants to protect the interests of upland game hunters on Crown pastoral lease lands earmarked for freeholding. Although a model hunter access covenant has been developed, the experience so far in Otago and Nelson is that leaseholders do not like the concept. Other means of providing access are necessary.

### **Greenstone and Caples Valleys**

The agreement to use covenants in the Greenstone and Caples valleys is part of the Ngai Tahu Treaty Settlement intended to permanently protect the public interest in the two valleys. The Settlement agreement provides for Ngai Tahu to get freehold title to the valley floors with covenants protecting the natural landscape character (Greenstone valley only) and free "wander-at-will" public foot access to both the Greenstone and Caples valley floors.

Legal opinions obtained by Fish and Game on the adequacy of covenants used in the Ngai Tahu settlement and by the QEII Trust confirmed our concerns about the Property Law Act. This over-rides covenants entered on land titles. Even when the words "binding on successors in title" provides little security for these agreements.

Covenants are not an alternative to public ownership of land. They have a relatively high risk and shouldn't be used where significant public values are at stake. But they are useful for protection of values in smaller, discrete areas that are neither difficult to protect through other means, or have less significant values present.

Covenants are still untested and some monitoring of their success rate over the next few years is warranted.

*The PANZ view of covenants is that their inherent weaknesses are so great that they cannot be relied upon to ensure either protection of conservation values or on-going public access and recreation. Also under private land ownership there is no scope for public input and oversight, as there would be if public land. When covenants are used as part of tenure reviews in the high country, PANZ advocates 'securing' these under the Conservation Act so that the covenant is treated as an 'interest' in the land that DOC cannot dispose of without public process. This provides a limited measure of security, however this still does not prevent a landowner from unilaterally applying to the Courts to have a covenant modified or extinguished – Ed.*

## **Roadcorp coming soon!**

Transport Minister Maurice Williamson has announced that Government has gone off the idea of privatising public roads or establishing a host of competing roading companies as recommended by its Roading Advisory Group. However Government is still intent on corporatising the state highway system and local roads with a 'business-like' structure, apparently dependent on electronic surveillance and direct road user charges rather than the present indirect system of funding through property rates and petrol levies etc.

Earlier this year PANZ obtained publication in daily newspapers of our concerns about roading reforms. We pointed out that public roads are much more than just corridors for transportation. They are in fact the central thread that holds our civilisation together – a point that appears still to be lost on Mr. Williamson and those besotted with market-forces models of life and the universe. As we pointed out, roads are primarily corridors guaranteeing freedom of passage for passers-by and rights of access or 'frontage' for individual property owners. Although it is very useful that many public roads are formed, they do not have to be suitable for motor vehicles to serve their fundamental purpose.

Our rights of use have evolved over several centuries and are protected by the Common Law, as determined incrementally through the Courts. Without roads providing freedom of movement for all citizens there is no way our society can function for even the most basic of social interactions or commerce. We would be prisoners on the particular patch of dirt where we reside, having to negotiate and purchase passage over others' land to go anywhere. Such a state of anarchy would be of course a utopian expression of market forces ideology, which is probably why such a model has been floated in New Zealand at this stage in our societal melt-down but, significantly, no where else.

What Mr. Williamson either doesn't know or care about, is that *any* system of user-pays which requires direct payment for road use (ie. tolls), as distinct from paying for road construction and maintenance indirectly through other means, will destroy a key foundation of our society. That is the ability and freedom for any member of society to go about their daily lives from place to place without payment or penalty, and for property ownership that has meaning and value as part of a wider society.

The Minister's only known response to our concerns has been to state that PANZ has not suggested any alternatives to his proposals, implying that there are no alternatives to change. He views the status quo as "a recipe for stagnation or chaos". He attempted to rebut our concerns that the imposition of tolls on public roads was unlawfully and contrary to common law by incorrectly citing various tolled motorways like the Tauranga Harbour Bridge as public roads. They are not. As the title 'motorway' implies, they are for motors only. They are special entities sanctioned by statute and are not 'public roads' entailing common law rights of passage for all, by vehicle, foot, cycle, horse or whatever, as the vast majority of our roads are.

Mr Williamson challenged us to provide alternatives to his proposals. The obvious 'alternative' is to continue to sanction by special empowering legislation toll motorways, bridges, tunnels etc., as the need arises. This is what has happened for the last 100 or more years, but by leaving the real public road system alone.

## 'Roadcorp coming' continued...

Toll motorways can continue to be constructed to ease local traffic congestion or to shorten travel distances for motorists. There could even be scope for privately funded motorways however these should not be construed as being public roads. There should always be public road frontage or access for individual properties and alternative, if perhaps less convenient, rights of passage for other motorists and non-motorists to go about their business independently of motorways.

In what may be interpreted as heresy coming from a group dedicated to public ownership of our public road system, we believe that continuation of common law rights of passage, without Parliamentary interference and limitation by meddling politicians, is *more* important than public ownership. Not that we are advocating the latter. We just point out that in England, from where our common law is derived, the underlying soil of the road system is privately owned – the titles of adjoining land extend out to the centre of the roads. However, that private ownership does not permit the obstruction of public passage. There are effective legal remedies open to the local councils who build and maintain the road, foot and bridle path formations if a landowner does cause obstruction. Likewise those remedies are exercisable by individual members of the public.

Those same common laws apply in New Zealand. We are in fact blessed with the double protection of common law *and* public ownership, however this appears to offer little protection from the deprivations of our current crop of myopic rulers.

Government has remained silent as to its intentions for the half of our public road network that is unformed – the so-called 'paper roads' that provide essential legal and non-vehicle access to private and public lands everywhere. This includes half of the Queen's Chain along river, lake and sea shores. Williamson has already stated that ownership will "remain with individual property owners", graphically displaying either wilful deception or profound ignorance as to their true ownership. With commercially driven roading authorities in charge, there will be pressing reasons for disposing of such non-revenue generating liabilities.

## Ngai Tahu – a done deal?

Government, with the support of Labour and many independent MPs, has just enacted possibly the most deceitful and undemocratic piece of legislation in New Zealand's history.

The Ngai Tahu Claims Settlement Act 1998 is now law, and overrides many other pieces of legislation designed to protect the public's interest and say in the great outdoors—like the National Parks, Conservation and Reserves Acts. Our most sacred outdoor places, and DOC as the public agency charged with protecting them on our behalf, have been changed by stealth. In effect they are no longer primarily the public's lands or the public's agent, but Ngai Tahu's. Government has no mandate, either from the Waitangi Tribunal or the electorate, for this. We believe that this is the forerunner of what Treasury and other Maori claimants have in mind for public lands elsewhere.

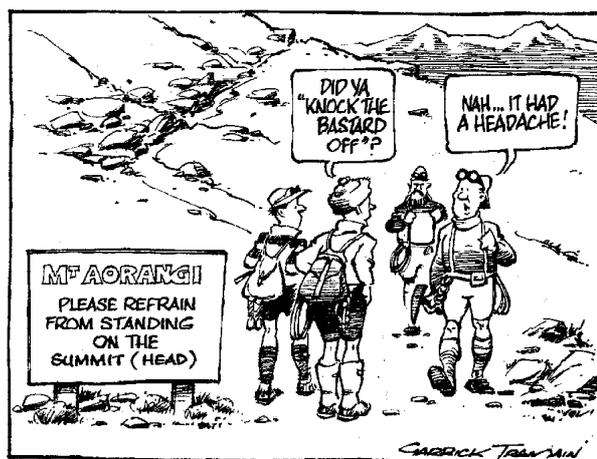
As we pointed out in 'Public Access' No. 9, most of the provisions in the Ngai Tahu deal relating to use of public places are contrary to the findings of the Waitangi Tribunal as well as the protocols on which negotiations between the Crown and Ngai Tahu were supposed to be conducted.

The inference behind the Government's actions, supported by Labour, is that its actions in reaching a 'settlement' is one of justice being done – in recompense of "the Ngai Tahu claim". This is despite it being a matter of public record – the Tribunal's report – that the only claim (singular) lodged by Ngai Tahu was rejected by the Tribunal as being so general in nature that they couldn't adjudicate on it. They instructed the claimants to come back with more specific claims (plural) for them to consider. It is only proven aspects of these specific claims that is what the Crown is supposed to be 'settling', not the imposition of ethnic fairy tales of 'Topuni', 'Nohoanga' and racial preferment through protocols dictating the management of public lands at the expense of everyone else.

This 'settlement' is not about justice being done, but about opportunism, expediency and dictatorial government.

We predict that as the many injustices of this vast 'settlement' unfold on the ground so will the level of public discontent and anger. This government, and any future governments, are therefore fooling themselves by believing that this 'done deal' will be final.

## Topuni



© Garrick Tremain

The Ngai Tahu settlement provides for the creation of 'Topuni' over more than 50,000 hectares of national park, conservation area, and public reserve. PANZ believes this to be one of the most insidious and objectionable components of the 'settlement'.

The whole Mount Cook Range is one 'Topuni'. DOC must have "particular regard" to "Ngai Tahu values" and may make regulations and bylaws "regulating or prohibiting activities or conduct by members of the public" and creating offences with fines of up to \$5000. The first expression of Ngai Tahu 'values' have been objections to the climbing of Mount Cook. The Ngai Tahu Act is a direct affront to the principles behind national parks... "the public shall have freedom of entry and access... so that they may receive in full measure the inspiration, enjoyment, recreation and other benefits..."

Sir Edmund Hillary has been reported as saying that he would probably ignore a 'tapu' on Mount Cook if he was still climbing (*Otago Daily Times*, May 1, 1998).

# Access News

Please send clippings (with date and source) to PANZ

## Christchurch council appeals road-reform ruling

*The Press*, October 2, 1998

The Christchurch City Council has taken its case over government road reform to the Court of Appeal.

The council applied to the High Court in May for a declaration that the proposal of a Government working party that roads be commercialised would extinguish or alter people's rights of access.

The High Court last month struck out the application, as requested by the Ministry of Transport, on the ground that the proposal was intended for public discussion and was not Government policy.

The council discussed a report on the case on September 23 and decided to appeal. Counsel for the council, Tom Weston, lodged the appeal on September 25, stating as a ground that the High Court's judgment was "wrong in law".

The chairman of the strategy and resources committee, Cr David Close, said the legal and social issues of road reform were of such importance that the council wished the courts to make a declaration on citizens' rights so the Government would have to take them into account before making decisions.

Council legal services manager Peter Mitchell said the question of the cost of the appeal would be considered when amounts were known.

A critic of the council's stand on road-reform proposals, Mark Kunnen, said the High Court's decision was a learned one. He slammed the decision to spend more ratepayers' money on it.

## The end of the paper road

*NZ Herald*, September 19, 1998

Throughout the country, there are many kilometres of what are known as "paper" roads—lines on maps denoting proposed roads.

Many of these lines have been there for years, the land bought for roads but, as time has passed, all thought of construction gone.

Waipa District Council in the Waikato is surveying its strips; some dating back to the 1880s, intending to offer them to owners of the land they cross or adjoin.

The council prefers to sell—aggregating the strips into buyers' existing titles—but admits some might prefer to lease.

At the moment, most of the land reserved for roading is used by farmers. "They're getting value out of land they don't own and don't pay a lease for or even rates on," says a council spokesman.

The council has commissioned surveys and preparation of legal plans, and says the sell off could take five years to complete.

Some paper roads go along gullies which have low land value, others cross prime dairy land worth up to \$20,000 a hectare.

The council estimates it has about 150 roads that never were, nor will be—from 50m long and involving little more

than 500 sq m, to 3.2km long and 6.4ha.

"Their value will range from a few hundred dollars to perhaps \$100,000," says the spokesman.

Some will be of a shape or size to suit residential use and will be sold on the open market as sections. —Ric Oram

*The last two reports illustrate the very wide divergence of understanding among local authorities as to the nature of public roads, and of their obligations as roading authorities – Ed.*

## Mountain-guiding firms dismiss DOC offer

*The Press*, September 22, 1998

Two mountain-guiding companies have rejected the Department of Conservation's offer of 10-year concessions because of an "unacceptable" clause which they say would give Ngai Tahu power over their future.

Te Runanga o Ngai Tahu was the only objector when many of the mountain-guiding companies sought to replace their short-term ad hoc concessions for ones lasting 10 years.

The tribe's submission included calls for it to be the arbiter on issues of whether guiding was making an excessive cultural impact, and a requirement for "more tangible" recognition of the sacred topuni status of Mount Cook's summit than simply telling clients about it.

Last week, the Department of Conservation distributed to guides a draft version of the concession which retained the department's right to decide about cultural impact.

Alpine Recreation Canterbury owner Gottlieb Braun-Elwert and Alpine Guides Westland spokeswoman Carol Browne both said the draft was still unacceptable because of a nebulous clause that allows a review of the concessions part way through. Ms Browne said the clause "had to be thrown out".

Mr Braun-Elwert said a legal document could not include a clause allowing the "shifting of the goalposts half way through the game".

Although he had trust in the Ngai Tahu representatives he had met, he had to guard against possible abuse in case a more militant faction came to the fore during the next 10 years. He also expressed concerns about the failure to clarify the topuni status of the Mount Cook range, which was the site of 90 per cent of his company's guiding work, and the compulsory nature of a workshop on Ngai Tahu values.

Mr Braun-Elwert said mountain guides had been working in the shadows of Mount Cook for 100 years and were "tangata whenua in the true sense".

"I have every respect for other people's feelings, culture, and spirituality, as long as this is a mutual exercise. Nothing less is acceptable," he added...

## Access fears Crown lease changes bring warning on high country

*High Country Herald*, September 9, 1998

TIMARU—Loopholes in the Crown Pastoral Lands Act 1998 could lead to the loss of ecosystems and public access to the high country if the public was not watchful about the outcome of tenure reviews, Green party co-leader Jeanette Fitzsimons believes.

Ms Fitzsimons visited South Canterbury and North Otago last week and told the *High Country Herald* fears held by

recreational users of the high country regarding public access under the Act should be taken seriously by the high country community also.

Runholders are now able to freehold part of their land in return for surrendering certain tracts of land to the conservation estate. Ms Fitzsimons said while the retiring of land to the conservation estate was a significant gain, there was a risk, as land was sold on—especially to those from outside New Zealand—that the traditional access of hunters and trampers would be lost.

“It is an incredibly precious part of the world, and New Zealanders regard access as their birthright.”

There had never been any legal compulsions for farmers to give the public access, but most had agreed to reasonable access conditions in the past. The hospitality of the high country meant it was one of the few places that still retained a sense of community, and this was under threat if new owners came from countries where such land was accessible only to the wealthy, she said.

Lilybank Station near Lake Tekapo, which was owned by the son of former Indonesian president Suharto, and where the Trespass Act was “enforced to the letter of the law”, was a perfect example of the differences between “the average kiwi farmer who wants to be part of the community,” and someone who comes in and says ‘this is my kingdom’ and regards visitors as the enemy,” she said.

“It would be a shame if the high country went that way.”

There were also potential implications for search and rescue if runholders decided to deny entry to land.

Valuable ecosystems might be lost under a provision for covenants where an environmentally fragile area would remain under the control of lease holders. Ms Fitzsimons said while that was fine for a smaller area, it was looking as though covenants were being used for vast areas which should [instead] be under Department of Conservation management.

Ms Fitzsimons said now the Act was passed, the situation was in the hands of the negotiators in charge of the tenure review process.

“It is important the public watches carefully — we need to look at what is coming out of tenure reviews.”

## DOC threatened with legal action over hunting dispute

*The Dominion*, September 10, 1998

Christchurch: A Mackenzie Country lodge, owned by Tommy Suharto, the son of former Indonesian president Suharto, is threatening to sue the Department of Conservation (DOC) and the Commissioner of Crown Lands over a hunting dispute.

Lilybank Lodge managing director Gerard Olde-Olthof said on Tuesday night DOC had illegally directed hunters to Lilybank land.

More than 25,000ha of the lodge’s land was to be surrendered to DOC as part of a purchase agreement.

Mr Olde-Olthof said the land had not been surveyed or gazetted and could not be because DOC did not have the \$4.3 million to pay for it.

That meant, he said, that it reverted to Lilybank pastoral lease.

He said he had seen no surveyors on the property in the Godley and Macauley valleys and would resist signing any surrender agreement.

“I want to do to them [the department] what they have done to us”.

The latest wrangle became public after DOC cancelled 100 hunting permits it had issued for access to the Godley and Macauley valleys.

The Department’s Twizel area manager, Rob Young, said the permits were cancelled because of a technical hitch between DOC and Land Information New Zealand.

Mr Olde-Olthof said hunters had continually trespassed on Lilybank land and been sent with DOC’s blessing.

There had been a confrontation with shooters and he believed one of the shooters he ordered from the station recently was an off-duty police officer.

Mr Olde-Olthof said he had called police more than 100 times during his stay at Lilybank.

A spokesman for the Commissioner of Crown Lands, David Gullen, said a final survey plan had been approved, and he thought the issue might be resolved within weeks.—NZPA

## New Web Site

We now have our own ‘domain name’ and a new host for our Web site. This can be located at—

[www.publicaccessnewzealand.org](http://www.publicaccessnewzealand.org)

For reasons of economy and ease of publication we are making greater use of this electronic medium to get our message out, with less reliance on printed publications. Our web pages are regularly updated.

Just about everything we have published is available at our site – the contents of newsletters, research monographs, press releases etc. There is a mass of resource information on the Queen’s Chain, high country, public roads, and a growing body of Treaty related information. You will find relevant Parliamentary debates (‘Hansard’), legislation, and official proposals for tenure reviews including maps. PANZ finds that having all this information readily available is a useful research tool – so we are sharing it with the rest of the World!

### Public Access

Published by Public Access New Zealand Incorporated.  
R D 1, Omakau 9182, Central Otago.  
Phone & Fax (03) 447 3554. Occasional publication.  
Single copy \$3.00 (incl. GST), plus \$1.00 postage.  
Overseas rates on application. Free to PANZ Supporters.  
Editor: Bruce Mason

© Public Access New Zealand Inc. This publication is copyright. Except for rights under the Copyright Act, and for reproduction of one article with acknowledgement of publication name and issue, with author if cited, no part may be reproduced without the prior permission of Public Access New Zealand. Contributed material may also be copyright to the authors and require their consent for reproduction.