DoC failing public recreation

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Last year United leader Peter Dunne MP called for DoC to be scrapped and replaced by a Department of Outdoor Recreation. Mr. Dunne told the annual conference of the New Zealand Recreational Fishing Council that New Zealanders' rights to enjoy the environment were running an unacceptable second to rigid conservation values.

The sentiments behind Mr Dunne's call are understandable, but his solution to perceived bias against recreation is unnecessary. The law does not need to change, but DoC's performance needs to radically improve. A major shake up is certainly in order.

PANZ agrees with Mr. Dunne that the present management of the great outdoors in New Zealand is unbalanced, but DoC is already mandated to be an advocate for both the natural environment and recreational values.

The necessary balance between conservation and recreation has already been struck in the legislation covering national parks, reserves, and conservation areas. Consequently PANZ doesn't believe that there is an inherent conflict between the two objectives requiring DoC to be split up. What DoC needs is firm direction from Government to honour it's existing legal obligations.

A welcome change would be renaming of DoC as the Department of Conservation and Recreation, to provide a daily reminder to staff that they have dual responsibilities.

As well as its conservation role, DoC already has a statutory duty to "foster" recreation", as distinct from only "allowing" tourism.

Its perverse that DoC now only seems to equate recreation with the building of facilities, particularly elaborate ones that best serve the interests of the tourism industry. This generates concessionaire revenue for the department.

> *However outdoor recreation's primary values are self discovery, skills enhancement, and the fostering of a healthy relationship with the environment. Equity requires ready opportunities for everyone no matter their economic circumstance. Many recreationists only require, and can only afford, basic facilities, if any.*

PANZ believes that DoC, as manager of public lands, should be focusing on planning to ensure the maintenance of a diverse range of recreational opportunities, while ensuring protection of the environment. These days it seems that the only planning DoC does is for expensive facilities, 'Great Walks', *inviting* tourism development, and for removing low-cost tracks and huts in back country areas. This is a sad outcome for a public-service department with many dedicated outdoors' staff.

DoC required to "foster" recreation

There is growing concern, bordering on alarm, within the recreation community that DOC has become a tourism promoter – at the expense of public recreation.

Under-funding since the department's inception provides the genesis for a range of official policies and attitudes that are unfriendly to recreation. With an inadequate budget and 'conservation' being seen as DOC's primary function, recreation is increasingly seen by officials as of secondary importance.

Flow-on consequences from budget constraint are cost recovery and revenue generation policies. This coincides with rapidly growing tourism pressure, with this sector now seen as the department's central means of providing *recreational* opportunities, and income. Promotion of front country 'Great Walks' (often previously lightly used tracks that had limited public profile), and development of high standard facilities with attendant high user charges, are the consequence.

Back country huts and tracks, the domain of the traditional tramper, are being removed, not because of high maintenance costs (in many cases minimal or no maintenance is being done), but because there are limited opportunities for revenue generation compared to the booming commercial tourism sector.

Officials now claim (and are currently trying to convince Cabinet) that, in recent years, there has been a revolutionary change in visitor profile and expectations to the extent that the traditional back country visitor has disappeared. However this is a fiction, evidenced by research. For instance the University of Otago has revealed that "back country" visits have increased nearly three-fold in recent years as visitors seek to avoid overcrowding in popular "front country" areas.

Government's election policies appear to be having no influence on DOC's performance, despite Labour making these commitments in 1999 —

> • review the condition of back country huts and tracks with a view to restoring them to a state that will ensure safe access to the back country

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• ensure that New Zealand's natural recreational resources are not captured for exclusive commercial use but remain freely available for reasonable public enjoyment
• ensure that DOC's visitor policy is consistent with DOC's paramount focus on conservation "to foster the use of natural and historic resources for recreation, and to allow their use for tourism"

The perversion of DOC's public recreation obligations is demonstrated by a current determination of user charges for huts and camping areas by no less than the Manager of 'National Revenue' in DOC's 'Business Management Division'. DOC clearly no longer sees itself as a public service, but as a revenue generator for itself and Government. Currently the department is seeking Cabinet approval for a strategy allowing removal or closure of back country huts and structures without any formal public consultation process.

The major 'business' growth area for DOC is the granting of concessions for trades or businesses, primarily tourism businesses. Only a small proportion is publicly notified with opportunity for submission and objection. Conservation Boards complain that DOC keeps them in the dark, and that there is inadequate or no monitoring of the impacts of concessions or compliance with conditions.

It is basically a free-for-all. The result is rapid, accumulative displacement of many New Zealanders from places they have traditionally enjoyed. The displacement can be physical (e.g., crowded out of huts), or from noise of aircraft. It seems the tourism-thrills sector cannot see beyond marketing its 'products' without an 'heli' element. There is now heli-skiing, heli-biking, heli-hiking, heli-hunting, heli-bungee, heli-jet-boating, heli-rafting, heli-fishing, heli-everything — just about everywhere. It is significant that such activities are either heavily constrained or banned in the countries of origin of many visitors to New Zealand.

As a PANZ supporter has observed, "tourism is indisputably our "golden egg", with huge potential for high quality, peak experience ventures, but tourism projects are getting out of hand. New Zealand is rapidly developing into "Tiki Tourist Land" – one great "Theme Park" full of high thrill, quick trip, soft-option "adventures"... intrinsic values of our wilderness areas must take precedence over pecuniary or commercial interests... "you don't know what you've got 'till its gone..."

There are now very few readily accessible places for the foot-based recreationist away from roads where there can be an assurance of natural quiet in otherwise natural environments. Aside from the major detriment to aesthetic appreciation, helicopter access can result in direct competition for limited resources such as back country trout fisheries – leading to their demise.

It seems that the outcome of most departmental decisions on concession applications depends on the personal inclinations of the officials making the decisions, with, it appears, only a cursory regard to the legislation that they are supposed be implementing. There is a widespread official view that —

• tourism is synonymous with recreation; that providing for the former satisfies the latter
• conservation is exclusive of and most likely incompatible with recreation (but oddly not with tourism)
• recreation is all about facilities — there no longer appears to be any effort going into planning to ensure a wide range of recreational opportunities are maintained, with or without facilities

The very essence of outdoor recreation — spiritual and mental refreshment from physical exercise in natural environments — seems lost in the official haste to accommodate the tourism sector and to generate revenue.

Only one decision has come to PANZ's attention that declined a concession application outright because of perceived conflict with recreational use.

In November 2000 DOC decided against granting a commercial heli-hunting application in the Kaimai Mamakau Forest Park, because, in part, of "the inability of the applicant to mitigate the effects on the general recreational use of the park...or on aesthetic values, through noise and perceived intrusion". The department noted that it is required to "encourage" recreation that is not inconsistent with the primary objective of the protection of the natural resources of the land that it administers. The park is used for a wide variety of recreational activities, including recreational hunting.

Just what are DOC's statutory duties in regard to recreation and tourism?

Conservation Act

The Conservation Act 1987 provides for the establishment of DOC, sets out its functions and the objectives for managing a large number of conservation areas. There are also national parks and a large number of reserves with their own legislation.

Common procedures for granting concessions over lands administered by DOC were established by amendment to the Conservation Act in 1996.

The Conservation Act provides a limited number of definitions of the terms it uses. The following underlined words have definition in the Act. *Italicised words* are not defined, so PANZ quotes from *The Oxford Encyclopedic English Dictionary*.

2. 'Conservation' means the preservation and protection of natural and historic resources for the purposes of maintaining their *intrinsic values*, providing for their appreciation and *recreational* enjoyment by the public, and safeguarding the options of future generations.

Intrinsic
Inherent, essential; belonging naturally (intrinsic value)
Recreation
The process or means of refreshing or entertaining oneself; a pleasurable activity

Section 2 provides the central ethos for DOC. Clearly, 'conservation' is not an 'either preservation or recreation' approach. It embodies BOTH objectives.

Characteristics of natural places such as natural quiet, or natural sounds of wind on tussock or ridge, or of flowing water, are clearly intrinsic to such places. A dinning assault on the senses from, for instance, helicopter intrusion, no more naturally belongs to wild places than it would in a concert hall.

"Providing for ... appreciation and recreational enjoyment by the public", raises the questions —

• does recreation include tourism?
• and who are the public?

Section 6 (the functions of DoC) answers the first question by making a distinction — recreation OR tourism.

6. Functions of Department—The functions of the Department are ...
(a) To manage for conservation purposes, all land, and all other natural and historic resources...
(e) To the extent that the use of any natural or historic resource for *recreation* or *tourism* is not inconsistent with its conservation, to *foster* the use of natural and historic resources for *recreation*, and to *allow* their use for *tourism*:

Foster
Promote the growth or development of; encourage or harbour (a feeling); be favourable to; cherish; have affectionate regard for (an idea, scheme etc)

Recreation
The process or means of refreshing or entertaining oneself; a pleasurable activity

Allow
Permit a practice, a person to do something, a thing to happen

Tourism
The organisation and operation of (esp. foreign) holidays, esp. as a commercial enterprise.

The question 'who are the public' is answered by section 17 ("entry to and use of conservation areas by the public shall be free of charge"), and by subsection 17O(4) –*"An individual or organised group undertaking any recreational activity, whether for the benefit of the individual or members (individually or collectively) of the group, does not require a concession if the individual or group is undertaking the activity without any specific gain or reward for that activity, whether pecuniary or otherwise"*. Part IIIB (concessions) requires concessions and payment of fees for commercial activities. The provisions cited above clearly exempt recreationists from such requirments.

Clearly, the clients of concessionnares, tourists, are recreating, but the providers, the concessionnaires, are not — they are conducting and organising commercial enterprises. The organisers require concessions, not their clients, although the latter end up paying for the privilege.

Section 17U creates an hierarchy when considering concession applications for the Minister to firstly *avoid* adverse effects. If unavoidable, then to *remedy* or counteract such effects. Thirdly, if neither avoidance or remedy is available, then to *mitigate* or moderate the effects. These are explicit tests of the Minister's powers.

Avoid
Keep away or refrain from (a thing, person, or action)

Remedy
A means of counteracting or removing anything undesirable

Mitigate
Make milder or less intense or severe; moderate

Subsection 17U(3), that "the Minister SHALL NOT GRANT an application for a concession if the proposed activity is contrary to ... the purposes for which the land concerned is held", is perhaps the most significant test that the Minister and DOC has to face, given the definition of 'conservation' and the statutory functions of the department.

Stewart Island deal introduces phony national park

The last Government's deal to protect Maori-owned South Island Landless Natives Act (SILNA) forests on Stewart Island is a very poor substitute for a national park and a poor use of public money.

In late 1999 former Conservation Minister Nick Smith announced that in exchange for $10.9 million this land would be managed "as National Park".

However Public Access New Zealand believes that National Parks are supposed to provide the public with freedom of entry, access and enjoyment. Dr Smith's deal with Rakiura Maori falls well short of this basic requirement.

PANZ's criticism of the deal follows that of Forest and Bird who were concerned about this large expenditure of public money jeapardising other conservation initiatives.

Inspection of the agreement and conservation covenant has revealed that –

- Public rights of enjoyment will be very constrained.
- The public must register before entering the area, with 'free' use confined to walking tracks. There will be no principle of 'wander-at-will' generally, as applies over national parks.
- Conditions of entry can be set.
- The public can be charged for services and facilities they may not desire.
- The public can be excluded because of unspecified "management" and "cultural" reasons.
- The Trespass Act continues to apply.
- Unlike National Parks the public will have no say on the management of the area.

The present Government has introduced the Tutae-Ka-Wetoweto Forest Bill which implements the agreement, with the same shortcomings concerning public access and national park status.

PANZ acknowledges that Governments are free to enter into agreements with the owners of private land, for a variety of purposes including conservation as has been done in this instance over this SILNA block.

However "deeming" these lands to be National Park seriously derogates from the standing and nature of national parks, and existing statutory procedures for their establishment.

The Bill does not meet the essential requirements of the National Parks Act.

There are grave implications from the precedent set by this Bill for the future standing, purposes, levels of protection, and public rights over existing National Parks. This precedent of privatisation of the national park concept in New Zealand has not been publicly debated, and is without public mandate.

This move is liable to be followed by amendment to the National Parks Act to make real National Parks consistent with the new approach.

While Government may feel that this is the best they could obtain while the land remains under private ownership, *it is a fallacy to pass this arrangement off as a National Park.* The arrangement should be confined to being a covenant between the Crown and the owners. We have submitted accordingly to the Maori Affairs Committee considering the Bill.

Private 'occupiers' liability for recreational use

Since the passage of the Health and Safety in Employment Act 1992, rural landowners have expressed concerns that they had become legally liable for visitors injuring themselves on their properties.

The original section 16 of the the Act imposed a duty on every "...owner, lessee, sublessee and person in possession of a place of work... to take all practicable steps to ensure that people in the place of work, and people in the vicinity of the place of work, are not harmed by any hazard that is or arises in the place of work."

The farming lobby was concerned about their liability under section 16 for visitors, including recreational visitors such as hunters, trampers and picnickers. As a result, some farmers started to restrict access to their land. Some recreational groups then lobbied the Government seeking a change in the law (PANZ did not, because we saw no legal problem requiring a 'fix').

A "lessee, sublessee and person in possession of a place of work" is an 'occupier'. The owner may be the occupier as well, provided he/she has not passed 'possession' to some other party, such an a lessee.

In legal terms, "occupier'' means-

> "in relation to any place or land, means any person in lawful occupation of that place or land; and includes any employee or other person acting under the authority of any person in lawful occupation of that place or land" (s2 Trespass Act).

Occupation Safety and Health (OSH), a division of the Department of Labour, made extensive efforts to explain that farmers would not actually be held liable for non-work related injuries to recreational users. This was not sufficient assurance for the farming lobby.

PANZ suspects that much of the concern was politically motivated and the possibility of liability, despite official assurances that none existed, became a convenient ploy for denying public access. Most farmers however did not, however for those with an axe to grind, or private property rights agendas to promote, OSH and their Act became a convenient rallying point.

To appease farming and recreational interests, the Government decided to amend section 16 to clarify the duties that a person who controls a place of work has to other persons. In particular, the Government wanted to make it clear for farmers that they do not have duties to persons using their land for recreational or leisure purposes unless they have given express consent to those persons to be on their land.

PANZ believes that this issue highlights the critical importance of having a generous, secure provision of public lands available for recreational use, without the inevitable restrictions and prohibitions attached to private places.

What is the effect of the change to the HSE Act? The principles behind the amendment are:

- Duties of the occupier to visitors are determined by the activity or purpose for which the visitor is present.
- Duties are owed to people visiting for reasons related to the occupier's work, those who pay to be there and those who are present for the financial benefit of the occupier.
- Occupiers owe a duty to warn all persons who are authorised to be in the place of work of known, significant, out-of-the-ordinary hazards arising from work in the place.

The amended section 16 makes it clear that a person who controls a place of work must take all practicable steps to ensure that the following people (in regard to visitors) are not harmed by hazards in the place of work:

- People in the vicinity of a place of work
- People with consent to be in the place and who have paid to be there or who are customers

Other people must be warned of out-of-the-ordinary, significant, work-related, hazards if they:

- Have given express authorisation by the occupier of the place to be in the place

Subsection 16 (4) makes it clear that, unless covered by one of the above, *there is no duty to people in a place of work solely for the purpose of recreation or leisure.* While not spelt out explicitly in the amendment, if a person is trespasser or otherwise has no authority to be in a place of work, they are owed no duty by the occupier under the amended section 16.

Is DoC an 'occupier'?

Occasionally DoC officials make passing reference to a liability for the Department arising from recreational use of "the DoC estate". That liability is implied to arise from the Health and Safety in Employment Act 1992 and/or the Occupiers' Liability Act 1962. This implied liability (DoC hasn't attempted to spell out any detail) has been used from time to time to sanction prohibitions on public access to parts of national parks that are not 'Special Areas'.

For either of these two Acts to provide such powers first requires consideration of what DoC is – a land owner, an occupier, or merely an administering department of state?

As the Director-General of Conservation, Hugh Logan, stated in the DOC Gazette, May 24, 1999 –

> *"As I travel around the country I hear a wide variety of terms used within and outside the Department (of Conservation) to describe the land we administer... Some of those phrases are of real concern to me, in particular "DOC land" and "DOC estate". They convey a sense of ownership which is misleading and I know can be off-putting to people outside the Department. I'd like to start hearing (and seeing) 'public conservation land' and 'public conservation areas'. These are a short and accurate way to describe the land and areas (like marine reserves) which we administer and most importantly, spell out that the land belongs to the public".*

Despite Logan's directive to staff, the prevailing ethos projected is that the true owners are merely visitors at the pleasure of the Department – having privileges rather than rights.

However the scheme of the Acts administered by DoC supports the Logan view. The land is 'owned' by the Crown. DoC is charged with "administering" the Conservation, Reserves, National Parks Acts etc., and subject to those Acts to "*manage* land for conservation purposes".

None of these Acts provide the kind of sweeping discretionary powers to constrain public recreational activity that might arise from the Health and Safety in Employment or Occupiers'

Liability Acts. This is probably why the latter are from time to time raised by DoC to justify some otherwise questionable administrative action.

Health and Safety in Employment Act applicable to DoC?
How can DoC qualify under the Health and Safety in Employment Act as "a lessee, sublessee and person in possession of a place of work" ? To be in "possession" one also needs to be an "occupier", with trespass rights.

For DoC employees, conservation areas, etc., are "places of work", but they are certainly not also occupiers, lessees, or persons in possession of such places.

Application of the Occupiers' Liability Act to DoC?
The Occupiers' Liability Act 1962 relates to the liability of occupiers for injury or damage resulting to persons or goods lawfully on any land or other property from dangers due to the state of the property or to things done or omitted to be done there.

Rules enacted under the Act regulate the duty which an occupier of premises owes to his visitors *in his capacity as an occupier* in respect of dangers due to the state of the premises or to things done or omitted to be done on them ("premises" includes land).

An occupier of premises owes the same duty to all his visitors, except so far as he is free to and does extend, restrict, modify, or exclude his duty to any visitor or visitors by agreement or otherwise (s 4).

The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (s 7).

DoC is not an 'occupier', and has no statutory powers to 'invite' visitors, with concomitant powers to not invite or restrict visitors or classes of visitors as a private discretion. That would hardly be in the nature of public land.

Settlement helps protect public access to Mt Hikurangi

An out of court settlement was reached in October last year over Government actions to vest the ownership of Mt Hikurangi in Ngati Porou.

Public Access New Zealand and Dr Hugh Barr filed a High Court action in 1999 challenging successive Government actions in extinguishing public ownership of some 3700 hectares of Conservation Park on the North Island's East Coast. This transfer of ownership to Ngati Porou was not the result of a Treaty claim.

Dr Barr is a former President of the Federated Mountain Clubs of New Zealand and well-known outdoor recreationist.

This action was filed after former Conservation Minister Nick Smith ignored legal advice that such a transfer was unlawful. In August 1999, immediately after receiving warning of our proceedings, Dr Smith rushed through a new deal with Ngati Porou that PANZ and Dr Barr believe substantially weakened public access arrangements for the mountain.

PANZ and Dr Barr hope that this case will act as a deterrent to Governments from riding roughshod over the interests of the public in their dealings with public land.

What was at issue were successive Ministerial actions going back to 1985, all of which bypassed the requirements of the Conservation Act for public objection procedures when Governments wish to dispose of conservation lands.

The central concern was the national implications for the security and integrity of lands held for conservation purposes, if a large area of prime conservation park land can be disposed of without public consultation.

As a result of months of negotiations the Crown conceded that in future, before it can use the Maori Land Act as a means of divesting public ownership of conservation areas, full consideration will be given to the purposes of the Conservation Act. Also the Crown agrees that it would not be suitable to use the Maori Land Act where there are recreation, public access, natural and historic values. Moreover, the Minister of Conservation has now undertaken not to attempt to use this Act for any 'specially protected area' including conservation parks, without first seeking advice from the New Zealand Conservation Authority and the local Conservation Board. The Minister has also agreed to consider instigating public consultation. *These are most unusual concessions from a Government, and makes taking the case very worthwhile.*

The Barr-PANZ action has also better secured public access to Mt. Hikurangi. There were serious weaknesses in the August 1999 agreement. Public rights of access may now be enforced by members of the public, if necessary, although we would expect the Department of Conservation to take a keen interest in ensuring that free public access to the summit of Mt. Hikurangi is in fact maintained.

The agreement now requires the Minister to take steps to remedy any breaches of access and conservation provisions.

We have received a clear undertaking that the Walkways Act applies. This guarantees that, except in specified periods of closure, "every member of the public may without charge at any time pass or re-pass on foot". These rights now extend to the summit of the mountain, something that was omitted from Dr Smith's deal.

'Off-on' access since transfer to Ngati Porou, and the Crown's reluctance to enforce its agreements with the iwi, has been cause of considerable friction with the public. Now that Ngati Porou have signed an agreement that they intend to abide by public access provisions, PANZ hopes that such problems are a thing of the past

As well as strengthening public access rights to the mountain, the proceedings and the agreement resulted in –

- marginal strips being laid off along riverbanks – this being an omission by the Crown
- prohibitions on public camping in the adjoining Raukumara Forest Park being removed
- all public access and conservation provisions being registered concurrently to land vesting
- annual reporting on the operation of the Crown's agreements with Ngati Porou

In return for a confidential Crown contribution to their legal costs, PANZ and Dr Barr agreed to withdraw their proceedings.

The one big issue that was unresolved by the Barr-PANZ settlement was the return of the conservation area to public ownership. This could not be achieved through negotiation. PANZ still believes that the transfer of this land was illegal and could have been overturned at Court. However the Crown's negotiators made less than subtle threats to enact special empowering legislation, with no guarantees of public access if

we won the case. Besides resulting in a waste of our money, such a transfer would likely occur without the kinds of protections that we were able to achieve through negotiation.

Both PANZ and Dr Barr wish to thank supporters throughout New Zealand who contributed towards the considerable cost of the proceedings.

The conservation and access improvements achieved by the agreement are not confined to those noted above. The full terms of the settlement is public information and may be obtained from the PANZ web site.

Ahuriri Valley Access

For generations the Ahuriri Valley in the Mackenzie Basin has attracted urban escapists – anglers, hunters, climbers, bird watchers, and casual wanderers. They are drawn by the beauty of the place: the great sweep of long, straight vistas, league after league, from the permanent snows near the main divide to the hot near-desert of the lower reaches. There are few landscapes as spectacular anywhere, and those who have been there, in winter or summer, sleet or sun, are unlikely to forget it.

But there is trouble in this paradise. Like most of the South Island's high country the Ahuriri is used for grazing. It is Pastoral Lease, from the green flatland of the riverbed to (for reasons difficult to fathom), the high and ungrazeable terrain far above the treeline. And, interspersed with this leasehold, is a patchwork of unalienated public land, State Forests and reserves.

The lease is known as Birchwood, and access is by a public road, penetrating far upstream, past the homestead towards Canyon Creek and into the head of the valley. This road is the natural approach to the river itself, to its tributaries, its surrounding peaks and forests.

The road was built at public expense, and is still maintained by the taxpayer. It is major boon to the runholder, Mr Williamson, as well as to anyone else who wants to explore the valley. It is a prime example of the virtues of communal funding.

But Mr Williamson apparently doesn't see it that way. The road, he seems to think, is his alone. Those who paid for it, and still pay for it, are often far from welcome.

Mr Williamson has received a pretty good deal from us, the public, the owners of the land. He has grazed a vast domain – including more than a thousand acres of valley floor for which he holds no lease at all. His livestock roam the State-owned forest, impeding regeneration, and damaging the tussock cover. He has been granted every indulgence, not just for years, but decades, and in return he has offered hostility.

I discovered this many years ago, on my first visit to the Ahuriri. The going was rougher then than now, and it was late afternoon when my companions and I had bumped through dusty Omarama and were approaching Birchwood. There was a gate across the gravel road – an expected thing on the high country except that this one said "Private Property –Trespassers Will Be Prosecuted".

We carried on. We were almost at the homestead, negotiating another gate, when Mr Williamson intercepted us. He introduced himself, civilly enough, and then explained that this was his very own private road, and that we could go no further. Bad weather was on the way, he said, and we would end up getting stuck, and he would have the bother of retrieving us. Very sorry, but no go.

It sounded plausible enough, and most people, I suppose, would left it at that and gone somewhere else. But, fortunately for us, we knew the rules. We knew that the road was a public one, and that far from trespassing, we were within the law, and if we got stuck, well, then that would be our problem. So we said our piece, and held our ground, and, after a bit of argument we were reluctantly waved onward.

Others were not so lucky. The "Private Property" sign stopped many of them, and many another was deterred by the subsequent interview. Yet all of them were within their rights, and could readily have insisted on it.

Things have got worse since then. At least two groups of climbers have been turned away in recent weeks, and, Mr Williamson, no longer content with mere deterrence, closed the road with a padlocked gate. This was illegal, according to Public Access New Zealand, and the whole affair was put into the lap of the Waitaki District Council.

Access to the Ahuriri has been a long and sorry saga, with Mr Williamson in the eyes of many playing the role of villain. But there are others – numerous, official others, who rightly deserve even more of the odium. DOC heads the list, as usual, with its local office at Twizel apparently unaware, until PANZ action, that the Ahuriri road is a public one, and misinforming people accordingly. Then there are various Commissioners of Crown Lands, and Ministers of Lands and Conservation – all of them derelict in their duties. And last, of course, the Waitaki District Council. It, more than anyone else, should be upholding the rights of the people.

Dave Witherow, November 2000

PANZ surveys roads and opens up access

PANZ action has now secured public access to the upper Ahuriri valley.

We engaged surveyors to define the location of the two legal roads up valley from the position of a new locked gate. We suggested to the Waitaki District Council that it would be useful for all parties, PANZ, the Council, and Birchwood Station runholder Ron Williamson, if the roads were defined. Council's representative Mark Yaxley agreed and undertook to seek Mr Williamson's agreement for our surveyor and assistant to enter onto the pastoral lease so that existing survey marks could be located. Mr Williamson consented. Mr Yaxley conveyed to us that Mr Williamson agreed that the road was public beyond the cattle yards (where the road was initially locked), and that he would relocate the lock from the yards to a new gate one kilometre up valley. This has now been done.

On 23 December 2000 the surveyor, with the assistance of Mr Williamson's son, located historic bridle path and dray tracks. These, in association with the earliest survey plan showing their existence (1891), allowed the surveyor to define these roads' centre lines. They were marked by waratahs (fencing standards). The surveyor also marked the boundaries of the pastoral lease with the State Forest and Unalienated Crown Land (UCL). The positions of roads and boundaries were recorded by GPS equipment. The accuracy is within a few centimetres.

Later that day Bruce Mason of PANZ arrived and walked over all the boundaries and roads with the surveyor so as to be sure of their position. Bruce camped over-night at the new road

end and the next day completed marking the access route to the DoC Base Hut via Firewood Bush (follow the yellow markers). This now provides a pleasant walking route to the hut through a mix of beech forest and grassland, with great views up valley to glaciated Mt Barth and the rugged Mt Huxley which dominates the valley head.

For a low-level walking route to the Ahuriri River follow orange markers. This provides valuable access for anglers and walkers.

Both routes provide quite different perspectives of the valley (the existing vehicle track is boring by comparison). Make a round trip of the new routes - start via Firewood Bush to the Base Hut, then follow the nearby fenceline down to the river, and return via the 'orange' track. Allow 1 1/2 to 2 hours easy walking.

Sign posting was erected, and all route marking and fence stiles completed by mid January.

Visitors are now assured of access to this wonderful valley.

Restraint needed by 4WD users

Four-wheel-drive users do not have an absolute right to use and to damage backcountry roads.

Public Access New Zealand has responded to concerns by the Central Otago District Council and the Dunedin City Council about severe damage being inflicted on the historic Dunstan Road and other high country roads in Otago. There are reports of ruts up to 60cm deep spread across road surfaces. Some roads have become so rutted that they have become unusable and even difficult to ride a mountain bike along.

PANZ is a staunch supporter of public rights of use over public roads as these provide essential rights of access for everyone. However PANZ research indicates that the common law right of unhindered passage at all times is not absolute. Our delving into English common law, which applies to New Zealand, reveals that in exercising passage if damage results to a road surface to the extent that normal passage by other users is adversely affected, then a public nuisance is created. This opens the damaging party up to a liability to be sued. Administering councils, other road users, or adjoining land occupiers could take action.

PANZ takes issue with some assertions that it is 4WD clubs alone that are responsible for damage to roads. Club members comprise a very small proportion of the 12 percent of new vehicle registrations nationally. There has been the phenomenal growth in 4WD sales in recent years, up 4 percent in the last 4 years. That is responsible for the upsurge in damage.

Councils can close roads temporally to protect the road surface, but only for classes of vehicle and not classes of user. They cannot lawfully lock gates. They cannot lawfully discriminate against recreational users and in favour of adjoining farmers. Problems have occurred in the past where councils have attempted this and become legally unstuck.

PANZ believes that councils must remain scrupulous in their dealings with the community by being even-handed.

Greater awareness among 4WD owners of their rights and limitations to those rights may help alleviate the problem. The 'tread lightly' ethic promoted by most clubs needs greater recognition in practice. There has to be general cognizance that when a road is clearly unsuitable for wheeled traffic, use is not a right it is an abuse. There is no God-given right to drive everywhere regardless of the damage inflicted.

PANZ advises that in wet conditions on soft, unmetalled roads susceptible to rutting, recreational users should park their vehicles and use their legs, or defer their trip until there are dry conditions.

Caples – Greenstone development

Supporters, and others, aware of PANZ's long interest in the ownership and management of the Caples and Greenstone valleys, and adjacent lands, will understand why we are opposed to proposals to drive a road up the Caples Valley and link it with a gondola intended to carry tourists on to the Milford Road in Fiordland National Park.

From the outset, in the early Nineties, we campaigned against government proposals – driven by the then Minister Doug Graham – to hand the lands over to Ngai Tahu. We said – and no one has proven otherwise – that the lands had not been illegally taken from Ngai Tahu. Even the august Waitangi Tribunal agreed with that. We said that the lands would be best added to the conservation estate and then investigated for addition to either the Mount Aspiring or Fiordland National Parks. We said that these lands, these magnificent and fairly easily accessible valleys, ought to be retained in public ownership in perpetuity for the benefit of all New Zealanders.

For saying this we attracted the usual sustained and offensive degree of invective. Accusations of racism, anti-development, and so on ad nauseum – the expected and predictable diatribes. We were especially uneasy about a clause in the government's settlement with Ngai Tahu whereby the tribe was given freehold title to part of the Caples Valley. Our unease, and that of other organisations – Fish and Game Otago for instance, but not its National Office, alas – was, in light of subsequent events, fully justified.

A road up the Caples, a glorious, park-like environment, would be an abomination. Without a road there will be no gondola across the Greenstone Valley and through the National Park which borders the valley. A road up the valley will wreck its ambience, its qualities as a lovely walk for people of average fitness of all ages. It will put further, unwanted pressure on a quality trout fishery, and one doubts if recreational hunters will see any advantage in it at all.

Gondolas and roads do not enhance the quality of special, sometimes rare places the world over. What is special about the Caples and Greenstone areas, if left largely as they are, will become more and more special as time goes by.

The ironies inherent in, and by whom, the road and gondola proposals for the Caples area are being proposed will not be lost on thinking people with feeling for the value of our natural heritage, and hopes that, collectively, as a people we will discharge our responsibility to protect and pass on the best of what remains of what is finest in the New Zealand outdoors. We will continue to oppose proposals to build roads up the Caples and to construct a gondola link to the Milford Road.

Brian Turner
PANZ Co-Spokesman

Recreation & sport review

The Sport, Fitness, and Leisure Ministerial Taskforce, which has held workshops throughout New Zealand during the latter part of 2000, has provided an opportunity for recreation based organisations to publicly promote their benefits and needs.

Along with others, Public Access New Zealand has contributed to this process.

Under the existing Hillary Commission regime, recreation has become a very poor second cousin in the minds of both our politicians, and those others who control national and local funding for sport and leisure activities.

PANZ has no dispute with funds being spent on sport but it is clear that over time a gross disparity has developed between funds provided for sport, and particularly for elite sport, and funds provided for recreational and leisure pursuits.

For instance out of a recent budget of the Hillary Commission totalling $35,000,000 only $100,000 or less than 0.5% was provided for outdoor recreation associations. In that same year $450,000 was provided to foster rugby which is now an elite sport, paying very high rewards to its participants and with enormous ability to generate income from gate takings and media sponsorship. Quite well able to look after itself financially without the necessity to seek taxpayer funding.

The involvement of outdoor recreationalists differs greatly from those in the elite sporting arena. The great majority of outdoor recreationalists are active participants in their activity whereas a great deal of the interest in elite sports comes from sedentary spectator participation. Funding allocated to encourage active participation is surely of at least equal value to that allocated for elite sporting achievement.

Providing support for outdoor recreation pursuits at first glance seems a difficult task. They cover widely disparate interests but apart from their common requirement for good training programs there are two principal needs which are common to all.

(1) They have a common need for funding for advocacy for their activity. Recreational pursuits have as their main value the requirement to actively participate. They are almost without exception not spectator sports where a captive audience can be charged for viewing, and the potential to achieve any funds required for training, safety programs or development are therefore minimal. In today's world there is an increasing need to advocate professionally before the forums of the state and regular recreationalists are confronted in these forums with commercial or political interests with seemingly unlimited resources.

(2) The second great need for all outdoor recreational activities is national effort for protection of the environment in which those activities are enjoyed – and clear unencumbered access to those areas. Trout fishermen and women need the Queens Chain and a move towards its establishment on all rivers, streams, and lake edges would be a very progressive and welcomed decision. Many other recreationalists would benefit from this move. Confirmed public access to rock climbing sites, paragliding areas, to streams for kayaking, unencumbered walking access up mountain valleys for trampers, climbers, game hunters etc. And we shouldn't forget those who enjoy recreational yachting, skin diving, skiing and recreational swimming and all the other full participation outdoor recreational activities which contribute so much to the fabric of life.

PANZ is to the fore on many national issues –

- The Queen's Chain – we are a leading advocate
- South Island pastoral high country – we are active in advancing tenure reform and public access leading to the creation of public reserves and parks
- The public Conservation Estate (national parks, reserves, conservation areas etc) – scrutiny to ensure that such areas continue to be managed sympathetically for recreation.
- Public roads – we have a particular interest in protecting rights of passage

Our work, and that of other NGOs, is essential for a healthy democracy and the continuing availability of lands and waters for recreation. All of these efforts have broad public benefits – in fact we are set up to serve the public interest. We believe we deserve some level of government assistance, while retaining our independence.

We are entirely dependent on subscriptions and donations and despite our large support base we are an underfunded, bare bones organisation.

We are very conscious of the dangers in accepting Governmental or institutional funding and the potential for forced compromise to our activities arising from it. There are however undoubtedly methods of allocation that could circumvent this.
Alan McMillan, Trustee

[The Ministerial taskforce has now reported to Government with an ambitious strategy to get New Zealanders off their backsides – to get active. This is a most welcome initiative.

From PANZ's preliminary look at the report it appears problematic as to how recreational advocates, as opposed to recreational participant organisations, would be accommodated within a new Government funding regime. While the taskforce has recognised the distinction of recreation from sport, the funding structures it recommends are best suited to individual sporting codes.

Advocates for "the public interest" for a range of recreational activities, who are not direct participants per se, are relatively few in number. However the benefits of their advocacy extend throughout the community. They, including PANZ, deserve recognition and support. They are contributing less directly to increased participation than 'participant' organisations, but are equally deserving of community support.

The issue of loss of sovereignty for organisations receiving Government funding was in the terms of reference but was not dealt with in the report. Conversely, their was no reference to the Treaty of Waitangi in the terms of reference however the taskforce recommends that all agencies involved in the recreation and sport sector "must reflect a commitment to the Treaty of Waitangi in their policies and practices at all levels". It seems that confused, ill-defined notions about what are really <u>state</u> obligations to the Treaty are to be transferred and enforced upon private organisations. That is likely to kill the subscribing support base of organisations whom also receive government patronage. The report claims to be non-political.

It may be best to remain poor and independent so as to better serve the aims of our organisation and the many individuals and organisations whom entrust their funds to us – Ed].

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