

Extracts from official statements and agreements concerning
public access provisions for Waiorau tenure review
(prior to 2000 agreement)

(PANZ emphasis)

Landcorp submission to Commissioner of Crown Lands (CCL) 13 November 1992

“Should parties wish to take the ski area road, access will be available on a commercial basis”.

PANZ Comment: this summarises discussions with NGOs that a road toll comparable to that paid elsewhere for skifield road tolls would be struck.

Landcorp submission to CCL 27 September 1993
Approved by CCL 1 March 1994

PUBLIC ACCESS

A number of groups raised the issue of a road toll for parties who wished only to use the proposed DOC estate. They felt it was unfair that they should pay the full field fee of \$20 per person. On previous occasions this issue had been debated at length with the lessee. No solutions had been reached because Mr Lee indicated that the road servicing the field was 75% of his total investment on the hill and was an on going major cost. Therefore in theory a road toll should be \$15 per person. He was also concerned about vehicles being left on the hill overnight with uncertainty of the owners where abouts. These latter points are management issues that still have to be resolved, however Mr Lee has agreed to move on the road toll issue in order to be seen to be realistic and will therefore charge groups wishing to go directly on to the DOC estate a commercial road toll only. These groups will be allowed to park on the field and move directly through his Nordic ski field on to the DOC estate. This arrangement for public access up the road to the DOC estate will be formalised by a legal easement.

PANZ Comment: this confirms that free parking would be provided.

Also the Meg hut will become a DOC hut which makes the southern end of the range very accessible. From the Meg hut it is approximately 1 hour to the tops, and from here the whole range is very accessible. Some submissions indicated the opposite but from having walked the country we hold a contrary view. It was also obvious some submitters were m familiar with the range, as they had not been there for some time.

PANZ Comment: this clearly records position on the hut; it hasn't happened; Lee is getting freehold title, and was harassing hut users for fees.

In summary the easement will cover the following:

- 1 The easement will be over the formed road from the legal road at the Waiorau homestead to the skifield car park for vehicular traffic and from the skifield car park to the Meg River for foot access only.
- 2 The access will be available at all times when it is reasonable to have the road open. Road opening is subject to weather and surface conditions. [note: no provision for closing road for 'commercial' reasons]

- 3 Access on the road will be available on payment of a commercial road toll. [no provision for parking fees]
- 4 All vehicles on the property are there at vehicle owners risk and the land occupier accepts no liability for damage. Unoccupied vehicles left overnight in the car park must have displayed in the windscreen a card giving the intentions of the occupier(s). [this was accepted by everyone]
- 5 For safety reasons pedestrian use of the road is not permitted.

CONCERNS RAISED BY MR LEE

... related to the transfer of the Meg Hut to DOC. This transfer will be tied to assurances by DOC relating to removal of waste, including the toilets, maintenance of the facility and personal use by the Lee family.

PANZ Comment: confirms intention to transfer hut to DOC.

Office of the Minister of Lands, PRESS STATEMENT, 22 MARCH 1994

WINNERS ALL ROUND IN OTAGO HIGH COUNTRY DEAL

"Public vehicle access on the private skifield road developed by the Lees has been secured subject to users paying a toll that will go towards maintenance. Free tramping access for the public will be available from the Cardrona Valley up to the conservation area and beyond via the pack track. The Meg Hut will come under the control of DOC."

PANZ Comment: confirms CCL approvals on road access and hut.

"Where appropriate the negotiators accommodated the public concerns, especially on questions of public access and the conservation covenants," Mr Marshall said.

PANZ Comment: this emphasises that the above provisions for access and the hut were central to the deal; but have now been reneged on.

Agreement between the Lees and the Crown dated 22 August 1994

- 4 THE Company shall grant:
 - a A right of way easement for vehicle access only over the formed access between the points marked 'X' and 'Y' (these points being the Waiorau homestead and the skifield car park respectively) in favour of the land in the third schedule. The easement shall be granted subject to the following conditions:
 - i The Company reserves the right to refuse access when in its discretion it considers weather surface conditions or for commercial reasons to be such that access should be denied. Such discretion will not be exercised unreasonably. [new provision, contrary to CCL's approval]
 - ii Access will be available on payment of the road toll set for public users of the scenic reserve. [same as approved by CCL, with no ability to charge for parking]
 - iii Neither the Company nor the Minister of Conservation accepts any liability for damage to any vehicle.
 - iv Unoccupied vehicles left overnight in the car park must display on the windscreen a card showing the intentions of their occupants.

b A right of way easement on foot only between the points marked 'Y' to 'Z' (the point 'Z' being the Meg River) in favour of the land in the third schedule.

CCL to PANZ 14 October 1994

I have considered carefully the matters you have raised and I am pleased to note your acceptance of the \$10 road toll. This arose following considerable negotiation with Mr Lee who correctly identifies the high capital and maintenance cost in providing this road facility. The final documentation for this easement is being prepared by the Department of Conservation.

PANZ Comment: confirms that the road toll was to be \$10, not \$20 as now agreed.

Car parking on the mountain became an issue after the tenure review was negotiated. Previously a large car park was maintained on the mountain, but this is no longer the case. During the current winter the ski area base has been relocated to improve public safety, and for logistical reasons. Unfortunately there is now limited parking on the mountain.

As the parking for other than Mr Lee's clients relates to the proposed Conservation estate, Department of Conservation staff are resolving this matter with Mr and Mrs Lee. It would seem appropriate that a reasonable fee be charged for the use of any facilities constructed to meet user demand.

PANZ Comment: the relocation of carparking is not a relevant consideration. Lee made his own commercial decision after he signed the agreement—should be his liability alone. In contrast he has obtained occupation rights over the DOC land, freehold over the balance of the property, and ownership of the Meg Hut site, without giving anything in return that could warrant official approval for changing the terms of the agreement.

Jeff Connell, DOC to PANZ 4 November 1994

Waiorau Road Access Easement

The agreement provides for the use of the access road between the "Waiorau Homestead" and the skifield car park. A legal road connects the homestead area to the Cardrona Valley Road. In my view, clause 4 of the agreement contemplates a road toll and overnight parking, but no parking fee. . [confirms that parking fee in breach of agreement]. The agreement clearly does not require DOC approval of the road toll, and we did not set out to achieve that.

PANZ Comment: this is contrary to what DOC officials told NGOs. We strenuously sought an approval roll for DOC in setting and amending road tolls; they led us to believe they would negotiate for this, but Connell's statement means they never did so –a major let-down.

We were and are prepared to rely on the preparedness of the Lees to set a fair road toll for users of the scenic reserve in vehicles. The "commercial reasons" that might warrant road closure discussed during the negotiations were early winter vehicle testing and the possibility of the odd closure for commercial filming purposes. I will ask the Lees to confirm this so that we have agreement on what "commercial purposes" means.

Ken Taylor, Knight Frank to PANZ 29 September 1995

PUBLIC ACCESS WAIORAU STATION

Thank you for your letter of 27 September 1995.

I share your concern that the "spirit" of the access agreement with Mr Lee is not being followed. Unfortunately it is difficult to manage until the tenure review documentation is completed. It also highlights the need for a draft of all documentation to be attached to heads of agreement.

I apologise for the current unsatisfactory arrangements which have arisen during the "in limbo" period between the effective date of the tenure review and final documentation.

Text of proposed vehicle access easement (November 1996)

Transferor: NORDIC SKI AREA LIMITED

Transferee: HER MAJESTY THE QUEEN [meaning Jeff Connell]

Pursuant to an Agreement dated 22 August 1994 an easement of right of way - motor vehicles only the full free uninterrupted and unrestricted right liberty and privilege for the Transferee her servants tenants agents workmen licensees and invitees [unacceptable: meaning at the invitation/pleasure of DOC; public rights of access essential] (in common with the Grantor its tenants and any other person lawfully entitled so to do) from time to time and at all times (subject as hereinafter provided) by day and by night to go pass and repass with motor vehicles only over and along that part of the land in Certificate of Title xxx marked "A" on SO 24352 being forever appurtenant to the land of the Transferee contained in Certificate of Title xxx

PANZ Comment: It is unacceptable for this, and other easements, to only provide for public access at the invitation/pleasure of DOC as invitees; public rights of access are essential, free of the potential for arbitrary closures by Lee or 'The Crown', acting in response to pressures from Lee or because of DOC's misguided priorities on maintaining a working relationship with Lee. Lee has got more than what he is entitled to out of the tenure review.

AND IT IS HEREBY AGREED AND DECLARED by and between the Transferor and the Transferee

1 a EXCEPT as provided in b of this clause the right liberty and privilege hereby conferred is available only on payment to the Transferor of the road toll set by it for public users of the dominant tenement. The Transferors shall ensure the fee set is a reasonable one which fairly reflects the easement users' share of maintenance of the easement and the car park [in breach of the CCL's approval and the agreement] associated with the easement. The initial fee is \$20 per vehicle [double what we understood would be the fee, as confirmed by CCL in letter of 14 October 1994. \$20 is the same the Lees charge per person as their 'field fee' for using all their ski tracks and other facilities, including the road] which may be amended from time to time by agreement between the parties. Should agreement not be reached within twenty-one (21) working days (or such longer period as the parties agree upon) after the date upon which the dispute or difference arises then it will be referred to mediation by a duly qualified mediator (being a member of the Mediators Institute or a member of LEADR) appointed if the parties cannot agree upon one by the President for the time being of the Otago District Law Society and in the event that it is not capable of being resolved by mediation, then the matter shall be resolved by arbitration in accordance with the provisions of the Arbitration Act 1908 or any enactment passed in amendment thereto or substitution therefor.

PANZ Comment:

(1) 'Fee' vs 'road toll'. The charge should be described as a 'road toll' rather as a 'fee' so as to define what the charge is for. It is the common terminology used on other private roads.

(2) Setting of fees. It is inconsistent, and unreasonable for the Lees alone to set the initial fee. If DOC

has a role in subsequent fee-setting, as it should, why not initially?

(3) Payment for use of a car park is contrary to CCL decisions and agreement. On signing agreement

Lee accepted that there would be no parking fee and that he was obliged to provide parking. It was his

commercial decision to change the location of the carpark, and therefore his liability, if there is one.

(4) The 'initial' fee should be \$10. The CCL acknowledged to PANZ on 14 October 1994 that this is

what had been agreed. \$20 is a rip-off. For a single visitor it is the same as for someone using all the

Lees' facilities and services. The road toll should be 'commercial' relative to comparable skifield

roads in the region.

(5) There is no substantive basis for determining what is 'reasonable' either by Lee alone, or when in arbitration. There is no requirement for Lee to keep, and present on request, records of road maintenance costs relative to other costs, or of the number of users so as to fairly apportion the road maintenance costs.

b OFFICERS of the Department of Conservation and authorised agents of that Department may use the easement at any time without payment of a fee while they are engaged on official business.

2 SUBJECT to clause 1b the Transferor reserves the right to refuse access when in its discretion it considers access should be denied either for commercial reasons such as vehicle testing and filming exercises or because of weather surface conditions. The Transferor will not exercise its discretion unreasonably.

PANZ Comment: This is contrary to CCL's approval and does not define the 'commercial' reasons, only gives examples. It could for instance be deemed that allowing the public through the area without using and paying for his facilities and services is bad commercial practice and hence reason to deny passage to the DOC area. This is completely unsatisfactory as it gives Lee complete discretion to bar public users if he so wished, while continuing to allow clients of his own commercial nordic ski operation to use the road. If there are to be road closures, they should only apply to all public and client users.

3 NEITHER the Transferor nor the Transferee accepts any liability for damage to any vehicle.

4 UNOCCUPIED vehicles left overnight in the car park must display on the windscreen a card showing the intentions of their occupants and ticket office staff advised by the occupants that vehicles will be left overnight in the car park.

PANZ Comment: this is a new provision. It appears unnecessary because of the requirement to display intentions card. It requires everyone to front up to Lee or his staff, with potential to be harassed-which has happened.

5 THAT the rights implied in paragraph 2c in easements of vehicular right of way by the ninth schedule to the Property Law Act 1952 are hereby expressly excluded and the Grantor shall be solely responsible for maintenance of the easement.