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Public Access New Zealand

An Incorporated Charitable Trust

In This Issue:

Walking Access Commission Makes Early Progress

The Walking Access Commission, set up under the Walking Access Act 2008, held its first open meeting for stakeholders in Christchurch on 30th September 2009 to outline its main goals and to report on early progress in working towards them.

The Commission presented draft copies of two important documents: The proposed *Outdoor Access* Code supported by a comprehensive paper entitled *Draft New Zealand Outdoor Access Code*, and the *Draft National Strategy For Walking Access.*

Commission Chair, John Acland, also introduced its newly appointed Chief Executive Officer, Mark Neeson.

The Draft National Strategy sets the scene for the Commission's future activities as follows:

The purpose of the Act is described as:

...to provide practical, enduring and guaranteed access to the outdoors that the public enjoy- at no cost.

Some of the Strategy's main goals are:

- Making reliable information on walking access opportunities readily available
- Enhancing peoples knowledge, understanding and acceptance of appropriate standards of behaviour in the outdoors
- Achieving free, certain, enduring and practical walking access to and along waterways and to public land where there is an identified need or to make provision for the future.
- Assisting the resolution of walking access disputes and
- Working with partners to embed access as a priority.

An explanation as to how these five points will be achieved is comprehensively covered in the draft strategy document and I would commend it as a document well worth downloading from the website below

Not Just Walking Access

It is very important to note that the Walking Access Act covers other forms of public access as well. While the first priority for the Commission is to provide for walking access, it is recognized that this will not meet all access needs. Where it does not compromise walking access it may be extended by agreement to other forms of access such as mountain biking, off road vehicles and hunting/carrying guns.

The purpose of the Commission is clearly stated as:

Being responsible for leading and supporting the negotiation, establishment, maintenance and improvement of

(1) walking access

(2) types of access that may be associated with walking access such as access with firearms, dogs, bicycles, motor vehicles.

The Commission also states it will apply and recognise a number of principles in its work included in which are that it will:

- Value highly its independence and be an independent source of advice and information to all interested parties. – And take an active leadership role in provision of policy advice to the Government and to other agencies relating to access
- The Commission will work to resolve disputes by consultation and explanation of the law in the first instance, with mediation or voluntary arbitration as a fall back option – and court proceedings as a last resort.

For those who still believe the Commission will be a toothless tiger an understanding of the import of the last paragraph is essential

The Future

In my view the draft Outdoor Access Code and National Strategy on Walking Access are major steps forward and I expect there will be widespread approval for the progress made so far. It would be unusual if there were not to be criticism of some aspects of the draft plans and all parties will need to take on board any constructive criticism as the process continues.

The Walking Access Commission, and the strategy it is preparing is a once in a lifetime opportunity and our efforts should now focus on ensuring that the gains made with the Commission's establishment are protected and enhanced.

The performance of Mark Neeson as CEO will be critical to the Commission's success. Mark has been involved in the development of the Commission since the very early stages. He is well versed in the machinations of inter departmental interactions and the Wellington political scene. We need to give him and the Commission all the support we can so that public access to the outdoors is taken seriously by the politicians and bureaucrats with whom he will be working.

Copies of the Walking Access Commission documents can be downloaded from the Commission's website (www.walkingaccess.org.nz) or requested from contact@walkingaccess.org.nz.

Alan McMillan
Chairman

Rangitata Terrace Road Saga

The Ashburton District Council's plans to 'stop' (or extinguish) about 10 kilometres of the Rangitata Terrace Road ran into local opposition and eventually involved PANZ. The road, which runs close and parallel to the Rangitata River, doesn't provide direct river access but it facilitates access because it is only a short walk from the road to the river albeit that walk is across private land .

The District Council wanted to stop the road in order to acquire land by exchange, and to provide for only two unsatisfactory points of access to the Rangitata River. That seemed to be an extraordinarily lopsided deal so PANZ objected along with others and the matter went to the Environment Court.

PANZ's view was that to stop the road there needed to be shown a significant public benefit and that the interests of the adjoining landowners, and the council interest were very much secondary.

The Rangitata River has no marginal strip, esplanade reserve or other mechanism providing access to or along the river in the affected reach so the road provides something of an opportunity to address this serious shortfall through negotiation with adjacent landholders.

Following the hearing the Environment Court issued an interim judgment on the matter which allowed the stopping of a part of Rangitata Tce Road subject to conditions as follows:

a) Foot access to be provided to the river at Shepherds Bush using a track to be formed and maintained by the District Council with a formed car park at the commencement of the walking track
b) Public vehicle access to be provided to the river at the Cracroft Water Intake again with a formed car park at the end of the road.
c) Walking access provided to the river using a previously unformed and unnamed road (known as the "perpendicular" road) running from an unstopped portion of Rangitata Tce Road. Originally the District Council intended the perpendicular road be stopped.
d) A requirement that the Council must negotiate with adjacent landowners to waive any *ad medium filum* rights they have which as a consequence would allow the public to access the river bed and the margins of the river between Cracroft and Shepherds Bush.

The issue of *ad medium filum* rights had apparently not registered with the Council until PANZ raised them in submission so this particular matter may not be widely understood by local authorities. In all the outcome, once implemented should establish much improved public access to the river at several locations and public access along the river bed and margins as well.

Major Risks with Greater Use of Covenants

Government recently signaled a major change in direction in the South Island High Country with its recent Cabinet paper *Crown Pastoral Land – 2009 And Beyond.* One of the things the paper proposes (refer Appendix A) is to...

> *"Investigate options for initiatives that recognise the lessee's role in stewardship of pastoral land , including the potential for greater use of covenants"*

The greater use of covenants is not a new direction. Similar sentiments have been promoted over the years. In June 1994 the then Minister of Conservation released a draft discussion document entitled *Public Interest Goals for the South Island High Country.* That paper argued that it is the "constraints on (land) managers" that are important rather than who the managers are. The simplistic logic behind the idea is that public ownership of land is no necessary to protect public interest values, and further that there is a place for "privately owned protected areas containing values of public interest"

At the time PANZ conducted a comprehensive review of protective mechanisms for nature conservation, public recreation and access over private land and comparison of them with public ownership and control.

Our research covered covenants, management agreements, protected private land, district plan rules and easements. We came to the firm conclusion that the shortcomings of covenant type protective mechanisms as a means of securing and managing the public interest over private land are so great that these cannot be taken seriously as a substitute for Crown ownership and control.

Nothing has changed in the interim and the "new" ministerial suggestion that covenants be used more extensively as a protective mechanism for the public interest in the High Country remains a flawed concept which we strongly oppose. If anything the past 15 years have thrown up a whole new set of examples why covenants are insecure and uncertain.

The lack of security for the public interest is the central flaw with covenants. The Courts have power to modify or extinguish covenants (section 316, 317 Property Law Act 2007)

This can be instigated at any time by the occupier of the land and there are no provisions for public notification or objection.,

It is noteworthy that Mr J Connell, recently retired DoC Otago Conservator was reported by the Otago Daily Times in October 2004, noting that two prosecutions following damage to covenanted land in Otago exposed the difficulties of covenant protection. Mr Connell was further quoted as saying that it was simply a more risky protection method than direct ownership by the Crown, councils or trusts charged with protecting areas of significant conservation values. We agree

At the present time of deep reflection on Government expenditure, proponents of private ownership and management of "public interest values" through covenants tend to assume that the Crown may be saved the cost of managing land by looking to covenants to protect those wider values. This leaves landholders the freedoms, responsibilities and costs of land management including maintaining the significant values present. It's a fine theory but experience to date doesn't support it. And any serious study of this assertion is likely to reveal quite a different picture because the Crown needs to cover a wide range of costs such as monitoring that may well extinguish any prospective savings.

Open space covenants arranged with the Queen Elizabeth II Trust, while serving a useful purpose in some instances, particularly for protecting some landscape values or smaller areas of native vegetation do not generally address public access and recreational issues. The QE II Trust and the owner can, by mutual agreement, vary the terms of the covenant at any time and we find little evidence that public opinion is valued or in fact considered at all in this process.

The QE II Trust Act 1977 appears, under section 33 re public access, to give the public freedom of entry and access to all Trust land, but standard conditions for open space covenants stipulate "prior permission from the owner". That is a reversal of the Act's presumption that there is freedom of access.

CONSERVATION PARKS:

We also have concerns at the current negativity towards the establishment of additional Crown owned Conservation Parks. Recreational users have no legal rights to benefit from private lands that are not covenanted and, given the nature of some covenant arrangements made they would appear to have little benefit from private land which is covenanted.

Under the circumstances we would urge all parliamentarians to continue to support the establishment of further Conservation Parks in the high country, not just over the non controvertial high altitude areas of rocks, ice and tussock where grazing doesn't really occur but wherever there are important conservation and recreation values.

The recent paper presented by the joint Ministers discusses an "end outcome" and proposes that such be worded so that:

"Crown pastoral land is put to the best use for New Zealand". This it goes on to say is intended to mean... *"that Crown pastoral land is put to its best use for economic, environmental and cultural purposes"*

Public access and recreational use of tussock land parks are issues which fit comfortably and must be accommodated within this proposed "end outcome" and as Te Papanui Conservation Park in Otago has proved, those activities can go hand in hand along with the creation of a most valuable water catchment area providing a major economic benefit for the Dunedin area.

Covenanted lands are no substitute for full Crown ownership and control, excepting where they are used to protect small and highly specific areas of conservation or heritage values. The current debate over the 'disappearing' covenants proposed to protect landscapes in the Nevis Valley tenure reviews are a case in point. These covenants have been designed to fail in the face of hydro development, the greatest and most obvious threat post tenure review, while protecting against all sorts of other lesser landscape threats.

We encourage all parliamentarians to accept the value of continuing the tenure review process to facilitate the establishment of more Conservation Parks, particularly tussock grassland parks for the benefit of healthy outdoor recreation, conservation, landscape and heritage protection and tourism.

The tenure review process if done properly is a most worthwhile investment in the future of New Zealand but if done badly, including through the widespread use of covenants, it will rob future generations of their natural birthright.

Ben Nevis and Craigroy Tenure Reviews

There is something rotten about LINZ's preliminary proposals for tenure reviews on Ben Nevis and Craigroy pastoral leases in Central Otago's Nevis valley. And there will be dire consequences for both outdoor recreation and biodiversity if the proposals for the two lease properties go ahead unchanged. This issue is a complex tangle, but it's important.

Tenure review is the process by which Crown pastoral lease land is assessed and split into the land suitable for freeholding to private interests for economic use, and the land to be retained by the Crown as reserve land for conservation and recreation purposes. The primary objects of tenure review under the Crown Pastoral Lands Act are the 'ecological sustainability' of land under review, and the protection of 'significant inherent values' on the land, so the public's interests are the first priority.

Submissions on the two Nevis valley reviews closed on 30th November and there is clear evidence that the preliminary proposals put before the public won't achieve either the ecological sustainability of the land concerned or adequately protect 'significant inherent values' present on the valley floor.

Rather than reflecting the important biodiversity, landscape, recreational, historic and cultural values present on land earmarked for freeholding, the deals are based on a prior agreement that DOC has with Pioneer Generation Limited (PGL). The agreement trades off mostly high altitude pastoral land, which DOC wants as extensions to conservation parks, for Nevis valley floor land that Pioneer want as freehold for a hydro power scheme. DOC initially tried to claim the agreement came about as a result of the Water Conservation (Kawarau) Order 1997 but that not correct. It's an agreement that was first revealed to Land Information New Zealand (LINZ) in 2008 and it has predetermined the shape of the preliminary proposals in advance of the only opportunity the public has to be involved in the process.

PGL purchased the two pastoral leases in 1997. They are a small Central Otago based power company wholly owned by a community trust (Central Lakes Trust). PGL has plans to develop a 40 megawatt hydro dam on the Nevis River despite the areas high environmental sensitivity, importance for biodiversity and for outdoor recreation. They want freehold title to Nevis valley floor land including a hydro dam footprint to advance those plans.

The lower freehold land is to be subject to landscape covenants intended to protect the important values present in perpetuity but there are a couple of serious problems with them. First, not all the important values are mentioned. Fish, skinks and rare plants are not mentioned and nor is public access. Second, the covenants require the Minister of Conservation to move the protection to one side in the event of a hydro development proposal in line with the DOC agreement. In reality the covenants offer little or no protection.

The grim irony is that it is the vulnerable species and threatened habitats which are at risk if the valley floor is privatised. The proposed freehold

land is home to a unique native fish – Smeagol galaxias- which is now considered a species in its own right. It lives mostly in smaller tributary streams. There are also rare and threatened skinks and plants as well, and a remarkably intact historic goldfield site – probably the most intact in New Zealand. The river system supports a trophy brown trout fishery and provides outstanding kayaking opportunity. By comparison the high altitude land to be retained by the Crown is not under any specific threat.

From a public access point of view the river and the floodplain area is the focus for most Nevis valley visitors although the tops are used and enjoyed by trampers, hunters and cross country skiers. Some describe the area as an outdoor museum and its location close to Queenstown makes it valuable for nature based tourism

Tenure review is a closed process. The final decision is made by the Commissioner of Crown Lands with DOC acting in an advisory capacity. There is no right of appeal over decisions made. The public have only one opportunity to influence the process through public submissions on the preliminary proposal but that has proven to be unproductive in the past with little or no changes being the usual outcome.

There is one further disturbing aspect to this conservation horror story. The land valuations on which the two tenure reviews are based doesn't make much sense. PGL are set to get freehold title to 7,891 hectares of lower slopes and valley floor land. This includes the best of the grazing land and the potential hydro dam footprint. The Crown retain 1,1118 hectares of mostly higher altitude land which must be of considerably less economic worth than valley floor land even if it is only the grazing value which is taken into account. Yet LINZ propose an additional equalization payment of $3,000,000 to PGL to compensate them for their interest in the high altitude land returned to the Crown. This can only mean that valley floor land with potential future use for hydro development has been seriously undervalued in the calculation. That may be because the protective covenants are presumed to actually restrict future use and so limit the value of the land. But by design, the covenants won't protect against hydro development, the most likely future use. So the public look set to lose a heritage landscape and will also have to pay for the privilege!

Uncertain Future for Marlborough Sounds Road

A section of Akerbloms Road in the Marlborough Sounds faces an uncertain future depite is value for public access. The unformed part of the road leads from the formed road down to the foreshore at Punaruawhiti Bay, near Punga Cove, in Endeavour Inlet, and provides secure public access to a small beach. But in response to a request from local landholders with adjacent commercial interests, Marlborough District Council is considering 'stopping' the section of road.

An association of bach owners (Camp Bay Residents Association (CBRA) is also involved and is representing the collective interests of the association. CBRA members' baches are served by the unformed road but it doesn't provide vehicle access in its current state. Something of a standoff has now developed and the Council has delayed the road stopping to allow negotiations between the parties, but there is a wider public interest which is not being represented.

Some local landholders want to limit public access to the beach by stopping the road and replacing it with a public walking access easement, and a high level vehicle access road in favour only of the members of CBRA and not the public. PANZ would be absolutely opposed to that sort of negotiated outcome.

The Council holds that the unformed portion of the road is in terrain which is steep and unstable and they have declared they will not form it. This seems to be a convenient excuse unsupported by independent engineering opinion. Indeed there appears to be some evidence to the contrary.

PANZ believes there is considerable public value in retaining the road. We believe it can and should be formed to allow vehicle access to the beach and to the properties owned by the CBRA. Little additional structural work would be required to allow the use of quad bikes, a common mode of transport in the area, and walking access to the beach from the car park along the road alignment could be provided if the council would simply clear the overgrowth.

A side argument in the issue relates to the clearance of vegetation from the unformed road. One local resident has been clearing vegetation by hand to provide access along the unformed road to the beach but he has been told that his activity is not legal.

At the time of writing the Akerbloms Road issue remains unresolved but PANZ has restated its position to the Marlborough District Council in a recent letter. It is time for

the Council to assert its position as the controlling authority in the area and to secure the obvious public benefits inherent in the road in question. In our view:

- Akerbloms road should not be stopped. To do so would provide no measurable public benefit and our organisation would post an objection to any attempt to do so.
- Restrictive alternative access options such as a registered easement for walking access by one route, and "high route" for CBRA members' vehicles only by another, are not satisfactory substitutes for the comprehensive rights which the public may enjoy on Akerbloms Road.
- The unformed portion of the road in question should be, in the first instance, prepared for use by pedestrian traffic by clearing current obstructions such as overgrowth. This should be undertaken by the Council in line with their own legal advice from Buddle Findlay who said *'If vegetation needs to be cleared to facilitate access along the road it is Council's responsibility to do this rather than the individual'.*

One disturbing aspect of the issue is the obstructions that individuals trying to clear a track are experiencing. There have been a series of actions apparently designed to slow progress - theft of materials, placement of obstructive foliage and terrain collapses.

The Council needs to bear in mind that public access to and along the coast, lakes and rivers is a matter of national importance in the Resource Management Act section 6. We will await with interest the District Council's reply to our letter.

An invitation to support Public Access New Zealand.....

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Public Access New Zealand Inc.

An Incorporated Charitable Trust

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5. ACTIVITIES:

My/our outdoor activities are:

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Public Access New Zealand is a charitable trust formed in 1992. PANZ"s objects are the preservation and improvement of public access to public lands, waters and the countryside, through the retention in public ownership and control, of resources of value for recreation.