

[Security classification – In Confidence]

Office of the Minister of Agriculture
Chair, Cabinet Economic Development Committee

Approval to release the *Reviewing the Walking Access Act 2008 - Public Feedback Paper*

Proposal

1. This paper seeks agreement to release the attached *Reviewing the Walking Access Act 2008 - Public Feedback Paper* (the *Public Feedback Paper*) in Appendix One.

Background

Purposes of the Walking Access Act 2008 (the Act)

2. The purpose of the Act is to provide the New Zealand public with free access to the outdoors. It also established the New Zealand Walking Access Commission with responsibility for leading and supporting the negotiation, establishment, maintenance, and improvement of: walking access over public and private land, and types of access that may be associated with walking access, such as access with firearms, dogs, bicycles or motor vehicles. Public access applies to all New Zealand, in and near urban areas, and in rural and more remote areas.
3. Government funds the New Zealand Walking Access Commission (the Commission), but it can also source funding from partnerships and sponsors, although it has not done so. Currently it receives \$1.789 million a year. The Commission:
 - has a small staff located in Wellington and across regions
 - negotiates with landholders to create walkways
 - works with other government agencies such as the *Department of Conservation, Land Information New Zealand*, and alongside local government
 - supports local communities to establish, improve and maintain access
 - provides advice to the Minister of Agriculture and others, including recommendations to the *Overseas Investment Office* on potential purchases.
4. Using the outdoors can have a wide and lasting positive outcomes for people. In particular, it can improve mental and physical health, social connection, and community resilience. The Mental Health Foundation, for example, says research says spending time in nature has positive effects on wellbeing. It is important to regional and national economic development; growing numbers of domestic and overseas visitors are making use of public access tracks, trails and areas.

Process for the Review of the Act

5. The Act (Section 80) requires a review ten years after commencement, with a report to be tabled before 30 September 2019.
6. Cabinet approved the Terms of Reference for the review in November 2018 [ENV-18-MIN-0041].
7. MPI is leading the review, supported by an independent panel of three with expertise across public access to the outdoors, landowner and Māori perspectives and government. Brief biographies of the panel members are in Appendix Two.
8. The review team held workshops with a small number of stakeholders in December 2018, to identify how well they thought the Act was working, and any areas where improvements should be made. Attendees included recreation group representatives, landowners, and central and local government. The review team has used these stakeholder meetings, along with information from the Commission and other organisations, to develop the *Public Feedback Paper*.
9. MPI proposes to release the *Public Feedback Paper* in May 2019, to be open for comment for seven weeks. The paper has been developed to gain public input to the Walking Access Act review by promoting discussion on what is working well within the Act and what improvements may be needed.
10. MPI will develop a review report for me, informed by responses to the *Public Feedback Paper*, and submit this report to Cabinet in September 2019. If legislative or other major changes are recommended, MPI will undertake formal public consultation after September 2019.

Concerns covered in the Public Feedback Paper

11. Initial discussions with stakeholders at workshops in December 2018 indicate the Act is generally working well, but there are potential improvements to the Act and the way it is implemented.
12. The *Public Feedback Paper* has been based on these workshops, and discussions with the Commission and other government agencies, including Te Puni Kōkiri and Te Arawhiti. The review team has identified the following potential issues.
 - i. *The purpose, priorities and functions of the Commission.* The wording of the purpose in the Act focuses on walking, rather than capturing access to the outdoors for a wider range of activities. This is reflected in the title of the Act, and is a barrier to other government agencies and community groups understanding the services they can get from the Commission.
 - ii. *Māori interests in public access.* Māori access to their wāhi tapu and protection of them are not well covered in the current Act.

- iii. *Equity for different groups.* Different user groups (such as horse riders and four wheel drivers) have reported inequitable access. Given New Zealand's changing demographics, the paper also asks how well needs are being met for older people, people living in urban environments, migrants, youth and children and for areas of high disadvantage.
- iv. *User behaviours.* Behaviour of some public access users can seriously impact locals and affect New Zealand's reputation as a tourist destination. Lack of funding for, or lack of clarity about who should provide infrastructure such as toilets or bins, exacerbates the situation.
- v. *Barriers to landowners providing access.* While many landowners have provided public access, others are concerned about cost, biosecurity, theft, disruption to operations, or having their privacy compromised.
- vi. *Work across agencies.* While the Commission has worked successfully with a number of councils and government agencies, sticking points can arise given different priorities, legislation or perspectives.
- vii. *Governance arrangements.* The *Public Feedback Paper* asks submitters to consider whether:
 - MPI is the right agency to oversee the Act and the Commission. During the *2016/17 Annual Review of the New Zealand Walking Access Commission*, the Environment Select Committee raised this question, as have other stakeholders
 - the Commission should be merged with a body with similar roles, such as *Ngā Haerenga – the New Zealand Cycle Trail*
 - Board composition is appropriate (requisite experience and number of members)
 - funding sources are still appropriate.

Risks

13. There is low risk associated with releasing *the Public Feedback Paper*. Some stakeholders may see the review as an opportunity to bring up rights to roam over private land, which has been in issue in the media in the past. "Right to roam" means is the general public's right to access certain public or privately owned land, lakes, and rivers for recreation and exercise. In New Zealand, this has not been the tradition, rather private landowners' rights hold sway, so that the *Walking Access Act 2008* requires public access over private land to be negotiated with the owner. The issue of 'right to roam' has been mitigated by excluding rights to roam from the Terms of Reference.

Proactive release

14. This paper will be proactively released within 30 business days of Cabinet's final decision on it.

Consultation

15. The following agencies have been consulted on developing this paper and the *Reviewing the Walking Access Act – Public Feedback Paper*, the: Department of Conservation; Department of Internal Affairs; Department of the Prime Minister and Cabinet; Ministry for Culture and Heritage; Ministry of Business, Innovation & Employment; Ministry for the Environment; Ministry of Transport; Ministry of Social Development, including the Office for Seniors, the Office for Disability Issues and Ministry of Youth Development; Ministry of Health; Te Puni Kōkiri; Office of Treaty Settlements; Māori Crown Relations Unit, Treasury, State Services Commission and Land Information New Zealand.
16. The following agencies have been consulted on developing the *Reviewing the Walking Access Act – Public Feedback Paper*: Heritage New Zealand; Local Government New Zealand; New Zealand Transport Agency; Sport New Zealand; Tourism New Zealand and the New Zealand Walking Access Commission.

Financial Implications

17. Financial implications will not be known until a more detailed analysis of report recommendations is completed.

Legislative Implications

18. The review may result in some changes to the *Walking Access Act 2008*, although these are not expected to be substantial. The review may also recommend changes to other legislation relating to public access to the outdoors.

Human Rights

19. The current purpose stated in the Act is for 'the New Zealand public' to enjoy the outdoors. The *Public Feedback Paper* asks if different population groups currently enjoy access, for example older people, young people, and migrants. If the report identifies equity concerns, they may need to be reflected in the Act or the way it is applied.

Gender Implications

20. The *Public Feedback Paper* includes questions that cover working towards equity for different population groups, including gender considerations.

Disability Perspective

21. The *Public Feedback Paper* includes consideration of public access for people with disabilities.

Publicity

22. The Minister of Agriculture and for Rural Communities will issue a media release in May inviting the public to provide feedback on the paper. A web page has been set up for the review, which provides the Terms of Reference and advises on the stages of the review. A shorter summary document has also been developed to support engagement (see Appendix Three).

Proactively Released

Recommendations

The Minister for Agriculture and for Rural Communities recommends that the Committee:

1. **Note** a review of the *Walking Access Act 2008* is required under that Act (s 80(1)) and a report on the findings of the review is due to the House of Representatives by the end of September 2019;
2. **Note** the legislation covers public access to the outdoors for walking and other recreation and contributes to the Government's wellbeing agenda;
3. **Agree** to the release of the *Reviewing the Walking Access Act 2008 - Public Feedback Paper*;
4. **Agree** to proactively release this Cabinet paper via the MPI website at the same time as the public feedback paper;
5. **Invite** the Minister of Agriculture and for Rural Communities to report back to the Cabinet Economic Development Committee on the findings of the review before the report goes to the House of Representatives in September 2019.

Authorised for lodgement

Hon Damien O'Connor
Minister of Agriculture
Minister for Rural Communities

Appendix One: *Reviewing the Walking Access Act 2008 - Public Feedback Paper (the Public Feedback Paper)*

Proactively Released

Appendix Two: Panel member biographies

Dr Hugh Logan

Dr Logan has had wide experience at national, regional and local levels that involve major outdoor access stakeholders. This includes environmental, conservation, primary industry, and local government and recreation organisations. He has worked as chief executive for the Ministry of the Environment and the Department of Conservation.

He has considerable experience in multi-stakeholder processes at national level, for example chairing the Land and Water Forum. He has also been involved in community level local groups, including the Mackenzie Trust and the Canterbury Mountaineering Club.

Leith Comer

Leith Comer (Ngāi Tahu, Ngati Māmoē, Te Arawa, Ngāti Rangitīhi, and Ngāti Pāhauwera) is the Chairman/Executive Director of Ngā Pūmanawa e Waru Education Trust and the Chairman of Te Mana o Ngāti Rangitīhi). He served in the military for over twenty years and is a current trustee of the Fallen Heroes Trust and the Chair of the Veterans' Advisory Board. He is a member of the New Zealand Parole Board.

Leith is also a former Chief Executive of Te Puni Kōkiri. He helped establish and was an inaugural member of the Rotorua District Council Te Arawa Standing Committee. In 2018 he became a Companion of the Queen's Service Order for services to Māori, the State and local government.

Sandra Faulkner

Sandra Faulkner owns and runs Wairakaia Station, a 600ha sheep, beef, cropping and citrus operation south of Gisborne, along with her family. Together they won the 2014 East Coast Ballance Farm Environment Awards. She is a member of the Institute of Directors and a trustee of the Campaign for Wool (NZ).

Sandra has extensive connections with rural landholder communities through being the Gisborne/Wairoa Provincial President for Federated Farmers of New Zealand, and an Executive Committee member of Farming Women Tairāwhiti Inc. She is also a Director of Arohiwi Station, which is owned by Presbyterian Support East Coast, and Vice-President of Gisborne Riding for Disabled Inc.

Appendix Three: Summary Document

Walking Access Act Review:

Have your say on public access to the outdoors

We are reviewing the Walking Access Act 2008 and we want to hear from organisations and individuals involved in access to the outdoors so we get the best possible outcome. The Act is about providing free access to the outdoors for walking and for types of access that may be associated with walking, such as access with firearms, dogs, bicycles, or motor vehicles. Access to the outdoors can be in, close to, or far from towns and cities.

New Zealanders value having access to our outdoor spaces, our land, bush, mountains, rivers, coasts, and areas of cultural significance. That access is also an important attraction for visitors to New Zealand, who support many businesses around the country.

The Walking Access Act 2008 says the Act **must** be reviewed 10 years after its introduction. The findings must be tabled with the House of Representatives before 30 September 2019.

The Act, including the role of the Walking Access Commission it established, is being reviewed to determine whether changes are needed. It aims to ensure the Act and the Commission are fit for the future.

The New Zealand Walking Access Commission is an independent body that leads and supports the negotiation, establishment, maintenance, and improvement of access. The Commission works with private landowners, local government, the Department of Conservation, community groups, and others to carry out this work. It also provides detailed information to help people find tracks and trails across the country and use them safely and respectfully.

The Ministry for Primary Industries is leading the review, because it is responsible for administering the Act. A review panel has been appointed with expertise in public access to the outdoors, how government works, Māori cultural values, and landholder issues.

The review will not consider the 'right to roam' over private property. Changing the premise that the New Zealand Walking Access Commission must negotiate access with landholders is specifically excluded from the review.

Public Feedback Paper

The success of the review will depend on the input we get from organisations and individuals with an interest in access to the outdoors. A public feedback paper has been prepared to help people engage and give feedback. It is available at <https://www.mpi.govt.nz/law-and-policy/legislation/walkingaccessreview/>. It includes the views of some stakeholders we have already spoken to and responds to issues they have raised. We've prepared this summary of the issues and two key questions

to be addressed. There are more questions in the public feedback paper and you are welcome to provide your views on any of these.

Two key questions

The two questions we'd like you to consider are:

1. What's working well?
2. What could be improved?

1. What's working well?

We have heard there is support for the Commission's independent brokering role in public access issues, and support for the role that its Regional Field Advisors play in working with landowners, councils and others to secure public access. Do you agree these roles are important?

What other aspects of the Act and the Commission's work do you think have been effective over the past decade?

Please provide examples or evidence to support your responses.

2. What could be improved?

We have received a range of suggestions on improvements that could be made to the Act and the Commission.

- *Reviewing the purpose, priorities, objective and functions in the Act*
Do the purpose and priorities in the Act need any updating? Do the names of the 'Walking Access Act' and 'Walking Access Commission' reflect public access issues now?
- *Working towards equal access*
Do you think the outdoors is less accessible for some groups? If so, who? What has been your experience?
- *Māori perspectives on access*
Many Māori want to access their wāhi tapu and other places significant to them, including where these are on private land. They want to make sure their taonga are protected. Some will want to take up opportunities to build business opportunities based on provision of free public access to lands they own.
- *Coping with visitor numbers*
High visitor numbers can provide economic benefits in the regions, but put pressure on the host community. What do you think the Commission's role should be in managing the impact of high visitor numbers?

- *Addressing barriers to landowners providing public access*
Some landowners see risks in providing public access to their land, from disruption to farming through to having to take responsibility for the safety of all visitors. What barriers do you think exist, and what should be the Commission's role in addressing them?
- *Encouraging positive visitor behaviours*
Can you provide any information to help us understand the scale of poor visitor behaviour on tracks and trails on private land, particularly those shared by different groups of users? Does the Commission provide enough guidance on responsible behaviour at wāhi tapu and other sites of cultural significance?
- *Organisations working together*
Do you have any examples where a lack of coordination or duplication between agencies and the Commission has got in the way of maintaining and improving public access?
- *Tools for the Commission*
The current instrument for creating walkways under the Act doesn't allow for a changing pathway – for example, if a stream bed moves. It doesn't allow the landowner to change the pathway easily if their farming operations change by season for example. Would a more flexible means of formalising a walkway be a useful addition to the Commission's tool box or would it create other issues?
- *Governance for the Act and Commission*
Do you think that the Ministry for Primary Industries, or another government agency, should administer the Act? What are your views on the size of the Commission's Board and the ideal skills and experience for its members?
- *Funding*
The Commission receives annual government funding of \$1.789 million, which it uses to employ Regional Field Advisers, provide advice about public access, cover survey and legal costs, and provide public information about tracks and trails. Should the Commission supplement this with private funding and/or cost recovery?

Please provide examples or evidence to support your responses.

Having your say

We want to hear from anyone who has a view on any aspect of the review. You can comment on one particular issue, or on every issue, and use whatever method you prefer – it's up to you.

Please email or post your contributions to us (contact details below) by [date tbc] May.

We have also developed a simple survey [link to be inserted] for those who prefer to provide their feedback this way. We anticipate that it will take about [tbc] minutes to complete. You can complete the survey alone, or complete it as well as providing additional input.

A broad range of agencies and organisations are involved in the public access system. When you are providing input, it would help us to know which organisations you work with, or contact, when you have public access issues.

Contact details

Visit www.mpi.govt.nz/law-and-policy/legislation/walkingaccessreview for access to the Public Feedback Paper, the Terms of Reference, the legislation, information about the New Zealand Walking Access Commission and the Review Panel, and the online survey.

You can email responses to the questions posed and any other input you have to walkingaccessreview@mpi.govt.nz, or you can write to Walking Access Review Team, Ministry for Primary Industries, P O Box 2526, Wellington 6140.