



Local Government New Zealand
te pūtakei matakokiri

Submission to the New Zealand Walking Access Commission

In the matters of the
Draft National Strategy for Walking Access and the Draft New
Zealand Outdoor Access Code

From *Local Government New Zealand*

18 December 2009

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INTRODUCTION

1. *Local Government New Zealand* thanks the Walking Access Commission for the opportunity to make this submission in relation to both the *Draft National Strategy for Walking Access* and the *Draft New Zealand Outdoor Access Code*.
2. *Local Government New Zealand* makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand. While individual councils can, and some will, make their own submissions, we believe this submission presents the wider “whole of local government” perspective.
3. *Local Government New Zealand* prepared this submission following:
 - an analysis of the *Draft National Strategy for Walking Access*
 - an analysis of the *Draft New Zealand Outdoor Access Code*
 - detailed feedback from our members on the practical implications of the issues raised by the draft strategy and the draft Code
 - the analysis of all feedback from our members and a detailed analysis of the legislative obligations on local authorities.
4. This final submission was endorsed under delegated authority by:
 - John Forbes, Rural Sector Leader, National Council.
5. *Local Government New Zealand* would be pleased to meet with officials from the Waling Access Commission for further discussion on any of the points raised in this submission.

GENERAL COMMENT

6. The development of the Walking Access Act 2008 (and subsequent creation of the Walking Access Commission) brings attention to an area of policy historically neglected by central government. Walking access is important to communities across the country and local government welcomes the introduction of leadership and resources into this space.
7. The draft Strategy sets out how the newly formed Walking Access Commission intends to fulfil its delegated functions under the Act. The creation of the draft Code is identified

as a key action under this strategy. In light of this, we feel it is appropriate to submit on the draft Code in conjunction with the draft strategy. For the most part, *Local Government New Zealand* is comfortable with the directions signalled by both of these documents.

8. *Local Government New Zealand* is particularly supportive of the draft Strategy's recognition that local communities are best placed to identify access needs and opportunities. We appreciate the strong signals that local government is a key stakeholder in issues concerning walking access. The sector anticipates working closely with the Walking Access Commission and field staff to promote walking access in the future.
9. The only real point of contention for *Local Government New Zealand* is created by the issues surrounding unformed legal roads. Both the draft Strategy and the draft Code adopt a very positivist view of the law in this area. Whilst users technically have the same rights of access to unformed legal roads as they do to formed roads, in reality these type of road can be vastly different. These differences potentially make strict enforcement of legal rights difficult, and both the draft Strategy and the draft Code should take these differences into account. *Local Government New Zealand* strongly recommends that more consideration is given to the practical implications of implementing the proposed actions.

THE DRAFT NATIONAL STRATEGY FOR WALKING ACCESS

10. Issues of walking access have traditionally been dealt with by relevant communities on a case-by-case basis. The leadership and level of resourcing signalled by the Walking Access Commission in the draft strategy are greatly appreciated.
11. This submission will comment on the vision, goals and actions outlined in the draft Strategy. The draft Code will be commented on as a specific action under the goal of enhancing people's knowledge, understanding and acceptance of appropriate standards of behaviour in the outdoors.

THE VISION

12. The draft Strategy outlines the Commission’s vision for walking access as:

“The aspirations of New Zealanders for free, enduring, and practical walking access to the outdoors are met in a way that respects everyone’s rights and the environment.”

13. *Local Government New Zealand* supports this vision. However, it is important to note that while we support the promotion of walking access, this support does not necessarily extend to issues of vehicle access. At times the draft strategy appears to blend the considerations affecting walking access and vehicle access together. While the outcomes achieved may be the same in many circumstances, the issues created by each are distinct. We believe that walking access and vehicle access should be looked at separately where possible.

14. *Local Government New Zealand* would also like to take the opportunity to reiterate the importance of private property rights. While walking access can and should be promoted, the Commission should not exist to place undue pressure on reluctant private landowners. If desired access cannot be negotiated successfully, this right of refusal must ultimately be respected. This element of the vision is critical for engendering trust and establishing enduring solutions.

THE GOALS AND ACTIONS

15. The bulk of this draft Strategy is contained in the commentary on the goals. The potential issues created by each goal (and its corresponding actions) will be looked at separately.

Making reliable information on walking access opportunities readily available

16. The draft Strategy notes that a common theme arising from consultation was the difficulty in sourcing information about legal walking access. A goal of making reliable information on walking access opportunities readily available is an obvious way to address this.

17. The first new source of information proposed by the draft strategy is a “one-stop shop” website for all walking access information needs. *Local Government New Zealand* is fully supportive of this action, particularly if the website is also used as a portal for

handling public enquiries. It could even be used as the primary mechanism for receiving applications for the contestable funding outlined as an action under goal 3.

18. The second proposed source of new information is a public access mapping database that shows where the public can enjoy walking access. This would presumably also be an online tool accessible from the website. *Local Government New Zealand* agrees that such a tool would undoubtedly be useful to users. However, we also understand that the Commission intends to include the locations of all unformed legal roads into this database. To avoid perverse outcomes from occurring, we believe that the inclusion of this information should be subject to certain conditions.
19. The first condition is that the Walking Access Commission consults with the relevant local authority before publishing the whereabouts of unformed legal roads within their jurisdiction. This is because not all unformed legal roads can usefully or appropriately provide walking access. Many are simply historical lines on a map that have no useful correlation to real life. Many are isolated, eroded, dangerous, or in some cases, now lie offshore. Many are in environmentally sensitive areas. Many are unsuitable for providing walking access, let alone the vehicle access that is also technically a legal entitlement. In most instances, the relevant local authority will know which unformed legal roads are useful, which will be useful subject to certain conditions, and which could cause more harm than good if relied upon to provide walking access post-publication.
20. The second condition should be using this additional information to differentiate the relative usefulness of unformed legal roads. With over 56,000km of unformed legal roads in New Zealand, this could potentially be a formidable task. However, it could be a task developed in stages and included as the information is obtained over time. Although differentiation may add additional cost, it is entirely consistent with the stated vision for free, enduring and practical walking access as outlined by the Commission.
21. *Local Government New Zealand* is happy to work with officials from the Walking Access Commission to facilitate conversations with local authorities if required.

Enhancing people's knowledge, understanding and acceptance of appropriate standards of behaviour in the outdoors

22. The second goal is to educate both users and landowners of their rights and responsibilities in relation to walking access. This will be progressed through the development of an outdoor access code and regional workshops.
23. The draft New Zealand Outdoor Access Code has been developed for consultation to fulfil this action and help achieve the stated goal. This draft Code will be seen to be effective if it can minimise damage and nuisance caused by users, as well as encouraging landholders to allow access to recreational visitors.
24. *Local Government New Zealand* generally supports the content of the section in the draft Code *Being Responsible*, and believes it could make a meaningful contribution to minimising damage and nuisance caused by users over time. It is particularly useful for generic behaviours such as fire safety that apply universally to public or private land in the outdoors. Unfortunately, we are not as convinced that the section on *Access rights and privileges* will be anywhere as effective at clearing up ambiguity for access users and private landowners.
25. This is because this section is too legalistic and largely bereft of information offering any practical assistance. It ignores the important fact that the final users of this document want to apply its contents to very specific pieces of land. As a result it does little to resolve what *Local Government New Zealand* sees as the two major problems requiring redress:
- i. that it is currently difficult for both access users and private landowners to ascertain where there is public access and where there is private land with no right of access
 - ii. if there is public access, what form of public access is it, and what legal obligations and restrictions are attached to it as a result.
26. Instead, it offers a brief description of the many different types of public access that exist in New Zealand. That is it. Despite not wanting to be an authoritative statement of law on public or private access rights¹, this is exactly how this section comes across. Instead of definitively clearing up the issues around walking access rights for users and landowners, describing each form of access is likely to simply generate more confusion.

¹ The Code provides guidance on the access rights and responsibilities of access users, landholders and land managers. It is not an authoritative statement of law on public access or private property rights. *Draft New Zealand Outdoor Access Code*, Status of the Code, page 5.

27. In order to be effective, this section requires additional information to assist access users and landowners in identifying what form of public access does or does not apply to an individual parcel of land. It also needs further information on any different legal obligations or restrictions that may be attached to the parcel of land as a result. There is a significant risk that this document could inadvertently reduce certainty if released in its current form.

28. *Local Government New Zealand* recommends the Walking Access Commission changes the tone of this section *Access rights and privileges* to make it practical as well as technical.

Achieving enduring public access to and along waterways and to public land where there is an identified need or to make provision for the future

29. This third goal represents the Walking Access Commission's desire to get more actively involved in specific issues of walking access. This includes both enhancing existing walking access, and promoting new walking access where appropriate. It also includes the introduction of contestable funding for local authorities and community groups.

30. *Local Government New Zealand* again welcomes the leadership and resources being introduced to this space. We would be pleased to assist the Walking Access Commission in developing guidelines for administering unformed legal roads. However, as this process has not yet started, the timeline for producing draft guidelines by 30/6/10 is probably unrealistic.

31. Although we can assist the development of administrative guidelines, the wider issues associated with unformed legal roads remain unresolved. The uncertainties created by archaic legislation ultimately jeopardise the ability to provide enduring and practical walking access. *Local Government New Zealand* strongly believes that a holistic review of relevant legislation is still required.

Assisting in the resolution of walking access disputes

32. The fourth goal of the Walking Access Commission is to assist in the resolution of walking access disputes. *Local Government New Zealand* supports this goal and the actions proposed to achieve it.

Working with partners to embed access as a priority

33. Although the Walking Access Commission was only established in 2008, local authorities and community groups have been active in promoting walking access for quite some time. There is a wealth of experience that can and should be tapped to ensure that lasting solutions can be achieved.

34. The draft Strategy appears to acknowledge this fact, and specifically identifies engagement with local government and community as a priority. *Local Government New Zealand* encourages the Walking Access Commission to work closely with local authorities during 2010.

RECOMMENDATIONS

35. *Local Government New Zealand* recommends that:

- issues concerning vehicle access be looked at and addressed separately from issues concerning walking access where possible
- where walking access on private land cannot be negotiated successfully, this right of refusal is ultimately respected
- the Walking Access Commission consults with the relevant local authority before publishing the whereabouts of the unformed legal roads within their jurisdiction
- any unformed legal roads published as part of a public access mapping database be differentiated to clearly show their relative usefulness, including any recommended conditions for responsible and appropriate use
- the section of the Draft New Zealand Outdoor Access Code entitled *Access rights and privileges* be modified to make it practically useful, as well as technical
- The Walking Access Commission lead a project to develop guidelines on administering unformed legal roads in consultation with *Local Government New Zealand*, the Department of Internal Affairs, and local authorities
- the Walking Access Commission lobby the Department of Internal Affairs to prioritise a holistic review of the legislation pertaining to unformed legal roads

- the Walking Access Commission continues to consult with local government and community groups as priority stakeholders.

36. *Local Government New Zealand* thanks the Walking Access Commission for the opportunity to make this submission in relation to both the Draft National Strategy for Walking Access and the Draft New Zealand Outdoor Access Code.