

In Confidence

Office of the Minister of Agriculture  
Chair, Cabinet Environment, Energy and Climate Committee

## **Walking Access Act 2008 Review Report to be tabled in House of Representatives**

### **Proposal**

1. I propose to table the report on the findings of the Walking Access Act 2008 (the Act) Review in the House of Representatives by end of September 2019, to comply with my obligations as responsible Minister under the Act.

### **Executive Summary**

2. 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. The Act covers public access to the outdoors for walking and other recreation and contributes to the Government's wellbeing agenda.
3. The review has now been completed and a report on the findings of the review is attached. I intend to present the report to the House of Representatives before the end of September 2019, to discharge my statutory obligation.
4. The report notes the continued necessity for the Act and the valuable role of the New Zealand Walking Access Commission (the Commission). It also notes the tight resourcing of the Commission and that more funding would be needed if any additional functions or expectations are required from it. The report's 30 recommendations include that the name of the Act be changed to reflect outdoor access more broadly than just walking, and that the Act is amended to acknowledge the Māori-Crown relationship under the Treaty of Waitangi. The report also recommends investigating formal integration of outdoor access related agencies.
5. I expect the reaction to the report to be generally positive. There is, however, the possibility of a negative reaction from a small number of individuals or groups unhappy with the scope of the review or its recommendations.
6. No decisions are being requested on the report's recommendations at this time. A formal policy process, including consultation, is required on the recommended changes prior to any government decisions (such as possible funding for additional activities or legislative amendments). I am still considering the timing for this policy process.

## Background

### *Purpose of the Walking Access Act 2008 (the Act)*

7. The purpose of the Act is 'to provide the New Zealand public with free, certain, enduring and practical walking access ... so that the public can enjoy the outdoors'. The access is for walking and other 'types of access that may be associated with walking access, such as access with firearms, dogs, bicycles, or motor vehicles'. Provision is for public access across the whole country; in and around urban areas, and in rural and more remote areas.
8. The Act established the New Zealand Walking Access Commission (the Commission) to take responsibility for 'leading and supporting the negotiation, establishment, maintenance, and improvement of walking access ... over public and private land'. The Government funds the Commission. It currently receives \$1.789 million a year and has a small staff of ten (full-time equivalent) located in Wellington and the regions. The Commission:
  - negotiates with landholders to create walkways over their land;
  - works with other government agencies such as the Department of Conservation (DOC) and Land Information New Zealand, and alongside local government to maintain and improve public access;
  - supports local communities to establish, maintain and improve public access; and
  - provides advice to the Minister of Agriculture and others, including advising the *Overseas Investment Office* on potential purchases.
9. The Ministry of Primary Industries (MPI) administers the Act, including overseeing the Commission.

## Analysis sections

### *Commission achievements and progress to date*

10. The Commission's achievements since its establishment in 2008 have been wide ranging. Since 2010, the Commission has created 17 new gazetted walkways, and has a number in progress. Walkways in development include more than 20 for foot and mountain-bike access on Coronet Peak and Glencoe Stations near Wanaka. These walkways have been a joint effort between the Commission, Soho Property Ltd (who hold the Crown Pastoral Leases), QEII National Trust, and Queenstown Lakes District Council, and are a drawcard for tourists in the district.
11. In addition to walkways, new access opportunities created by the Commission have ranged from legally enduring easements and formed tracks to informal access agreements providing access across private land with the permission of the landholder. Over the past six years, the Commission has negotiated a total of 300 access opportunities. These vary in length, depending on the purpose of the access for example, a short distance of access to important sites or connecting large parts of existing tracks and trails.

### *Requirement and process for the review of the Act*

12. Section 80 of the Act requires the responsible Minister to review the Act after it has been in force for ten years and present the report to the House of Representatives within 11 years (that is before 30 September 2019). The review has to consider the need for the Act, its effectiveness, and whether any amendments are necessary or desirable. The report on the findings of the review is attached in Appendix One.
13. Cabinet approved the Terms of Reference for the review in November 2018 [ENV-18-MIN-0041]. These are attached in Appendix Two.
14. The review was led by MPI, supported by an independent panel of three with expertise across public access to the outdoors, landowner and Māori perspectives and government. The three panel members were Dr Hugh Logan, Leith Comer, QSO and Sandra Faulkner.
15. Public engagement opened on 17 May 2019 and closed on 2 July 2019. The engagement process included public meetings in the larger cities, extensive online advertising, a submission process, Māori engagement that included both open hui and targeted conversations, and engagement with central and local government. Full engagement details can be found in the report.
16. MPI analysed feedback from 695 submissions to develop the report, which outlines key themes and recommendations for legislative and non-legislative change.
17. I am not requesting Cabinet agreement to the review's recommendations at this point. Decisions on the recommendations will not be sought until after I have undertaken a full policy process, which is outlined below under 'next steps'.

### *Key themes covered in the review report*

18. The report contains 30 recommendations under the following themes:
  - i. Necessity of the Act;
  - ii. Purpose, objective and priorities;
  - iii. Challenges and future requirements;
  - iv. Functions of the Commission;
  - v. Partnerships;
  - vi. Māori interests;
  - vii. Controlling Authorities;
  - viii. Governance;
  - ix. Resourcing;
  - x. Specific legislative changes.

19. Some of the recommendations are within scope of the Commission's current powers, while others would require legislative amendment. Those within the scope of the Commission's powers may not be possible without reprioritisation or additional funding.
20. The review was required to consider whether the Act continued to be necessary. The review found that:
  - there is resounding support for the ongoing need for the Walking Access Act 2008;
  - the New Zealand Walking Access Commission is performing an important and valued role in the public access system; and
  - the regime is contributing to New Zealanders' wellbeing.
21. To reflect the actual work of the Commission, and the realities of modern outdoor access, the review recommends that the name of the Act be changed to the Outdoor Access Act and that the Commission's name be changed to the New Zealand Outdoor Access Commission. The report recommends that language throughout the Act be changed to clarify that the Act's scope and the Commission's work are about access for all types of activities, not just for walking. The report also recommends that the Commission be given a new Māori name that has a similar meaning to the New Zealand Outdoor Access Commission, and that this name be included in the Act (which currently only confers an English name on the Commission).
22. Several iwi submissions noted the health benefits of outdoors access, as well as the importance of access in strengthening ties to culture and building community resilience. Health organisations also made submissions emphasising the benefits of outdoor access to physical and mental health. Submitters said that the purpose of the Act should be amended so it captures benefits other than 'enjoyment', and the review recommends this.
23. The Commission needs to keep its priorities for negotiating access over private land up-to-date. Currently, section 11 of the Act outlines priorities. A number of additions to section 11 were suggested through the engagement process. Rather than adding to the list in legislation, the report recommends consideration of whether section 11 be replaced with a strategic planning process mandated by the legislation.
24. The strategic planning process would determine the priorities for the Commission's work as a whole over a three-to-five year period. The Commission would prepare the suggested priorities and seek input from the Minister before they are finalised and made public in a strategy document. Every three to five years the priorities would be reconsidered, without the need for legislative amendment.

25. A number of recommendations are in response to tourism pressure and a diversifying population with similarly diverse interests and needs. These are that the Commission:
- considers equity for different population groups when identifying and establishing access (including different age groups, ethnicities, abilities, income, and urban and rural populations); and different types of recreational and other users (for example, those accessing culturally important sites); and
  - continues to undertake strategic project work to facilitate coordinated responses to access needs in regions, particularly in regions with identified or anticipated tourism pressure.
26. The report recommends that consideration be given to greater integration of responsibilities and functions carried out by the Commission, Te Araroa Trust, and New Zealand Cycle Trail Incorporated (which manages Ngā Haerenga), given the strongly aligned objectives of these organisations and potential for shared services.
27. The report also recommends giving additional resourcing for the Commission to help alleviate areas under pressure from high visitor numbers, by:
- identifying and facilitating new public access opportunities, away from areas experiencing pressure; and
  - developing and coordinating solutions to inadequate infrastructure in areas experiencing pressure.
28. Feedback from the engagement observed that the current Act is silent on many issues important to Māori and access. Consequently the review recommends amendments be made to the Act that acknowledge the Māori-Crown relationship under the Treaty of Waitangi including:
- a new statutory function for the Commission to partner with Māori in the context of carrying out all of its functions, which are listed in section 10 of the Act;
  - identifying explicit 'principles' of a partnership approach between the Commission and Māori across the breadth of the Commission's work, with a requirement that these principles be translated by the Commission into its strategies and practices;
  - an equivalent tool to the walkways mechanism [Part 3 of the Act] that allows access to sites of cultural significance for Māori to be limited to relevant Māori groups, such as iwi, hapū and/or marae; and
  - a requirement for controlling authorities (discussed below) to partner and engage with relevant Māori groups on management of public access areas on Māori land or where public access is negotiated to sites of cultural significance.
29. The review discusses in some detail a proposal from submitters that non-public bodies, such as community groups and relevant Māori groups, be able to become controlling authorities for gazetted walkways – a role that is currently reserved for public bodies only. The role involves promotion, maintenance and proper control of gazetted walkways, and establishing facilities on them.

30. Nearly all controlling authorities at the moment are DOC or council bodies. However, it is increasingly challenging to find a public body willing to take on the controlling authority role due to the time and costs associated with development, infrastructure and maintenance. Further, access is increasingly being managed and maintained by community trusts, iwi and local access groups, albeit in an informal capacity.
31. The report concludes that this proposal will have benefits for public access, provided the non-public bodies meet certain requirements prior to being appointed as controlling authorities, to ensure that they have the capability to take on the role. This would require careful consideration during the policy process to assess the policy and legal issues.

### Risks

32. A major concern to come out of the review is the (in)adequacy of the level of the Commission's funding for its current role. Repeated submissions raised this and the review panel has made this point in the review report. The report recommends:
  - *That, given the core work of the Commission, specifically the Walking Access Mapping System [a key source of information for walkway users] and the work of Regional Field Advisers, is highly valued, the Commission's baseline funding be increased to, at a minimum, keep up with the pace of inflation; and any changes to the scope or quantum of the Commission's work as a result of this review be accompanied by appropriate additional funding.*
33. Free and frank advice 
34. Officials have not analysed the financial implications of implementing the report's recommendations at this point. They will do this as part of the full policy analysis and engagement on the report's recommendations.
35. We expect a largely positive response to the tabling of the review report. There is some risk of negative reaction, however, from a relatively small number of individuals or groups who are unhappy with its scope or the recommendations.
36. A few people (some 10 to 20 individuals) may raise concerns that the scope of the review excluded consideration of the right to roam, in favour of the status quo requirement to 'negotiate' access over public land.

37. Another concern may be the limited number of face-to-face meetings and hui that were undertaken. Given the small size of the Commission and the need for proportionate engagement for the review, however, I am comfortable that the level of engagement in the review process was adequate. The review team received 695 submissions and 6000 website hits.
38. Three recommendations may be controversial with specific parties. Firstly, the report recommends further consideration of greater integration between the Commission and other relevant groups such as Te Araroa and New Zealand Cycle Trail Incorporated (the national body responsible for governance of Ngā Haerenga cycle trails). This recommendation is supported by Te Araroa Trust but not by New Zealand Cycle Trail.
39. Secondly, the recommendation for more work on a formal process for involving the Commission in the 'stopping' of unformed legal roads may be controversial with local government and Māori landowners. Road stopping is the process of changing the status of an unformed legal road to fee simple owned land and thereby removing public access rights. Feedback received through a recent review of the Te Ture Whenua Māori Act 1993 included strongly-expressed negative views on unformed legal roads, as a consequence of the history and circumstances of how the roads came to be there. Some Māori landholders expressed the view that the access provided by unformed legal roads is inconsistent with the principle of rangatiratanga and is contrary to the guarantee of full, exclusive and undisturbed possession of lands in Article 2 of the Treaty of Waitangi.
40. Thirdly, there may be some negative reaction to the recommendation to limit access to wāhi tapu and other culturally significant sites at the request of relevant Māori groups. The review recommends further work on each of these issues in the policy process, where stakeholders concerns can be more fully considered.

## Consultation

41. Consultation on development of this paper and review report included the: Department of Conservation; Department of Internal Affairs; Department of the Prime Minister and Cabinet; Ministry for Culture and Heritage; Ministry of Business, Innovation and Employment; Ministry for the Environment; Ministry of Transport; Ministry of Social Development (including the Office for Seniors and the Office for Disability Issues); Ministry of Youth Development; Ministry of Health; Te Puni Kōkiri; Te Arawhiti - Māori Crown Relations; Treasury; State Services Commission; Land Information New Zealand; Ministry for Women; Ministry for Pacific Peoples; Ministry of Education; and Ministry of Housing and Development.
42. The following entities were consulted in developing the review report: Heritage New Zealand Pouhere Taonga; Local Government New Zealand; New Zealand Transport Agency; Sport New Zealand; Tourism New Zealand; Kiwirail; and the New Zealand Walking Access Commission.

## **Financial Implications**

43. There are no financial implications from the presentation of the review report. Financial implications will be assessed if recommendations for change are made following the formal policy process.

## **Legislative Implications**

44. As above.

## **Impact Analysis**

45. As above.

## **Human Rights**

46. The proposals in the paper are not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.
47. The engagement process for the review explicitly considered equity of access, for different population groups including older people, young people, women, migrants and Māori.
48. The review report specifically addresses Māori issues in the context of public access, including allowing access to sites of cultural significance for Māori to be limited to relevant Māori groups.

## **Gender Implications**

49. The Public Feedback Paper and review report both address equity of access issues, including gender considerations. The report also considers gender appropriate marketing and promotion of public access. The review engaged with the Ministry for Women and received submissions from two stakeholder groups in the women's sector.

## **Disability Perspective**

50. The Public Feedback Paper and review report include consideration of public access for people with disabilities. Engagement materials were distributed widely to organisations in disability sector. The review engaged with the Office for Disability Issues (Ministry for Social Development) and received submissions from individual people with disabilities.

## **Publicity**

51. I will issue a media release attaching the report after it has been presented to the House of Representatives.

## Next Steps

52. I propose to proactively release this paper once the report has been presented to the House of Representatives, subject to redactions as appropriate, equivalent to those under the Official Information Act 1982.
53. The next step in the review process is to undertake a full policy review of the report's recommendations. This will involve public consultation on options leading to proposals for change (or an acceptance of the status quo). The formal policy process will also consider any reaction to the public release of the review report. I am still considering the timing for this policy process.

## Recommendations

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

1. **Note** that a review of the *Walking Access Act 2008* (the Act) 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 Act supports public access to the outdoors for walking and other recreation and contributes to the Government's wellbeing agenda;
3. **Note** that a review has now been completed, including public engagement, and a report on the findings of the review with 30 recommendations is attached to this Cabinet paper;
4. **Note** the review noted the continued necessity for the Act, the valued and valuable role of the New Zealand Walking Access Commission and concerns about its funding;
5. **Note** that the review recommended the name of the Act is changed to reflect outdoor access more broadly than just walking and that the Act is changed to acknowledge the Māori-Crown relationship under the Treaty of Waitangi, and that it recommended investigating formal integration of outdoor access related agencies;
6. **Note** that I intend to present the report to House of Representatives before the end of September 2019, to discharge my statutory obligation under the Act;
7. **Note** that no decisions are being requested on the recommendations of the review at this time;
8. **Note** that a formal policy process is now required on the recommended changes prior to any government decisions (such as possible funding for additional activities or legislative amendments);
9. **Note** that I may make minor editorial changes to the attached report, before it is tabled.

Authorised for lodgement

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