On Tue, 11 Aug 2020, 7:35 PM Bev Driscoll, <B.Driscoll@transport.govt.nz> wrote:

Dear

I write regarding your email of 23 June 2020 seeking information about roading authority bylaws for unformed legal roads. Further to our follow-up discussion, we have now identified and collated documents to release to you under the Official Information Act 1982 (OIA).

Your original request was as follows:

“The 2009 amendment act amended the land transport act 1998 by providing for roading authorities ability to issue bylaws stopping vehicles from using unformed legal roads.

Could you please provide a copy of the background papers underpinning those bylaw sections of the amendment act.

Among other things I would like to clarify that any new bylaw requires a local authority resolution in all cases.

I would also like to confirm the process for local authorities providing a copy of new bylaw to the minister within a week of setting that bylaw.

Is it the expectation of the bylaw section of the act that the local authority present their bylaw through the ministry or direct to the minister?”

When we discussed your request, we agreed that Cabinet papers and briefings would be likely to adequately cover the background papers you requested. I have attached a table listing the documents we have released to you, together with copies of those documents.

Certain information has been withheld from some documents. This is either because it is out of scope of your request, or to protect the privacy of natural persons under section 9(2)(a) of the OIA. Where this is the case, this is detailed both in the attached table and on the documents themselves. Where I have withheld information under section 9 of the OIA, I do not consider that there are countervailing considerations that make it desirable, in the public interest, to make the information available.

You have the right under section 28(3) of the OIA to make a complaint about the withholding of information to the Ombudsman at:

https://www.ombudsman.parliament.nz/get-help-public, or at this address:

The Ombudsman
Office of the Ombudsmen
P O Box 10-152
WELLINGTON
I note that document 14. *Memorandum to the Cabinet Business Committee – Walking Access Bill: Unformed Legal Roads* is slightly truncated on the right side of the document. Unfortunately, this is the only copy we had available. However, should you wish to source a better copy, please contact the Ministry for Primary Industries at: official.informationact@mpi.govt.nz.

The Ministry publishes our OIA responses, and the information contained in our reply to you will be published on the Ministry website. Before publishing we will remove any personal or identifiable information.

You also posed two questions about local authority process for bylaws. I trust the following information is of assistance to you.

All bylaws made by local authorities need a local authority resolution. However, section 22AB of the Land Transport Act 1998 (LTA) empowers road controlling authorities to make bylaws and not all road controlling authorities are local authorities. For example, an airport or a government department, such as the Department of Conservation, can be a road controlling authority. Therefore, not all section 22AB bylaws will be made by local authority resolution.

Section 22AB(4) of the LTA prescribes that a copy of every bylaw made under section 22AB by a road controlling authority must, within one week after being made, be sent by the road controlling authority to the Minister. The Minister may then, at any time, disallow the bylaw or any part of the bylaw under section 22AC of the LTA. Road controlling authorities can copy bylaws directly to the Minister of Transport’s office or via the Ministry of Transport. The Ministry of Transport has an email address for this purpose: bylaws@transport.govt.nz.

Yours sincerely

Bev

Bev Driscoll
Manager, Regulatory Policy
Ministry of Transport – Te Manatū Waka
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<tr>
<th>Portfolio</th>
<th>Document</th>
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<td>CBC (10) 62 Land Transport Amendment Bill: Previous Decisions</td>
<td>4/6/10</td>
<td>Parts out of scope of request withheld</td>
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<td>CAB Min (10) 33/1 Report of the Cabinet Legislation Committee: Period Ended 10 September 2010</td>
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<td>Transport</td>
<td>Ministry of Transport Report – Unformed Legal Roads And Walking Access – 6 May 2008</td>
<td>6/5/08</td>
<td>Staff phone numbers withheld to protect the privacy of natural persons under section 9(2)(a) of the OIA</td>
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<td>Agriculture</td>
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<td>6/5/09</td>
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<td>12. Ministry of Agriculture and Forestry – Briefing on EGI Paper on the Regulation of Motor Vehicles on Unformed Legal Roads</td>
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<td>13. CAB Min (05) 19/1B – Walking access in the New Zealand Outdoors: Key Provisions for a Walking Access Bill</td>
<td>30/5/05</td>
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<td>14. Memorandum to the Cabinet Business Committee – Walking Access Bill: Unformed Legal Roads</td>
<td>post 30/5/05</td>
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<td>18. POL (08) 172 Walking Access: Unformed Legal Roads</td>
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<td>19. POL Min (08) 11/13 Walking Access: Unformed Legal Roads</td>
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<td>20. Local Government Briefing – Proposed Review of Legislation Relating to the Management of Unformed Roads</td>
<td>15/6/05</td>
<td>Staff phone numbers withheld to protect the privacy of natural persons under section 9(2)(a) of the OIA</td>
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Land Transport Amendment Bill: Previous Decisions

Portfolio
Transport

Purpose
This paper seeks to confirm the amendments to include in the Land Transport Amendment Bill (the Bill).

Previous Consideration
In September 2007 – September 2008, the previous government agreed to various amendments to the Land Transport Act 1998 [POL Min (07) 22/7, EDC Min (07) 28/3, POL Min (07) 28/10, POL Min (07) 28/11, CAB Min (07) 45/11, CAB Min (08) 2/1A, CBC Min (08) 17/10 and EDC Min (08) 17/9].

These decisions have yet to be implemented through legislation.

Summary
The Minister of Transport (the Minister) has considered the previous policy decisions referred to above and proposes to proceed with a number of these changes. Some of these changes transfer existing sections of the Transport Act 1952 into the Land Transport Act 1998, thereby allowing the Transport Act 1952 to be repealed. Other changes will improve the effectiveness of the Land Transport Act 1998. These are of a technical nature or correct drafting errors, and will enhance the legislation.

The Minister seeks confirmation that these decisions be implemented through the Bill. These decisions are summarised in paragraph 8 of the paper, and are consolidated in Table 1 on pages 6–11.

Out of scope.
The changes for inclusion in the Bill were the subject of regulatory impact analysis when policy decisions were originally taken. The Minister is satisfied that the changes are required in the public interest, will deliver the highest net benefits of the practical options available, and are consistent with the commitments in the government statement *Better Regulations, Less Regulation*.

**Baseline Implications**

None.

**Legislative Implications**

The amendments listed in Table 1 will be implemented through the Land Transport Amendment Bill, which holds a category 2 priority on the 2010 Legislation Programme (must be passed in 2010).

**Timing Issues**

None indicated.

**Announcement**

The Minister’s office is preparing a communications strategy for the Bill, in conjunction with the Ministry of Transport.

**Consultation**

Paper prepared by Transport. Police, MAF, Treasury, MED, DOL, Justice, DIA, LGNZ, ACC and NZTA were consulted. DPCC was informed.

The Minister of Transport indicates discussion is required with the government caucus and with other parties represented in Parliament.

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The Minister of Transport recommends that the Committee:

1. note that:

   1.1 in September 2007 – September 2008, the previous government agreed to various amendments to the Land Transport Act 1998 [POL Min (07) 22/7, BDC Min (07) 28/3, POL Min (07) 28/10, POL Min (07) 28/11, CAB Min (07) 45/11, CAB Min (08) 2/1A, CBC Min (08) 17/10 and BDC Min (08) 17/9];

   1.2 these decisions have yet to be implemented through legislation;

2. note that the Minister of Transport (the Minister) has reviewed the decision referred to in paragraph 1.1 and proposes to proceed with some of these amendments in order to:

   2.1 transfer existing sections of the Transport Act 1962, allowing for that legislation to be repealed;

   2.2 improve the effectiveness of the Land Transport Act 1998;

3. confirm the proposed amendments that will be included in the Land Transport Amendment Bill, as listed in Table 1 of the paper under CBC (10) 62;

4. Out of scope.
Out of scope.

6 note that the Land Transport Amendment Bill holds a category 2 priority on the 2010 Legislation Programme (must be passed in 2010);

7 invite the Minister to issue drafting instructions to the Parliamentary Counsel Office to incorporate the amendments referred to in paragraph 3 above into the Land Transport Amendment Bill.

Proposal

1. That the Cabinet Business Committee (CBC):

1.1. note the decisions of the previous government that deal with amendments of a technical nature to enhance the effectiveness of the Land Transport Act 1998; and provide for the repeal of the Transport Act 1962, which I have agreed should be included in the Land Transport Amendment Bill.

Executive summary

2. To support the recently released Safer Journeys road safety strategy, a Land Transport Amendment Bill (the Bill) has been included in this year's legislative programme with a priority of 2 (passed by the end of the year, if possible). The Bill will introduce a number of amendments to the Land Transport Act 1998 (the Act) to give effect to government road safety decisions.

3. There are a number of other necessary amendments to the Act that are also intended to be included in the Bill. Amongst these are a number of technical amendments and drafting error corrections that will enhance the effectiveness of existing provisions in the Act, and transfer current requirements in the Transport Act 1962 to be finally repealed. All these matters were agreed to by the previous government. I have considered these and agree that these can be included in the Bill. No further policy agreement is needed to achieve this. It is considered prudent, however, to allow Cabinet to note that the provisions I have agreed to should be included in the Bill.

Background

4. The Bill is included in the 2010 legislation programme with a priority of 2 (to be passed by the end of this year, if possible). The main purpose of the Bill is to make any legislative changes to support, or give effect to, the government's decisions on the Safer Journeys first set of initiatives.

5. In 2007 and 2008, the previous government agreed to a number of proposals that would amend the Land Transport Act 1998 to improve the effectiveness of existing
legislation, or improve processes. The proposals could be grouped into three categories, as proposals that would:

5.1. allow the transfer of existing sections of the Transport Act 1962, which will allow it to be repealed

5.2. improve the effectiveness of the Land Transport Act 1998

5.3. complete the third implementation phase of the Road Safety Strategy to 2010.

Comment

6. Officials have provided me with advice outlining all the decisions mentioned in paragraph 5. I have decided to proceed with a number of these that would allow for the transfer of existing sections of the Transport Act 1962, or would improve the effectiveness of the Land Transport Act 1998. These are of a technical nature or correct drafting errors and will enhance the effectiveness of current provisions in the Land Transport Act 1998.

7. As all these matters have existing policy decisions, albeit by the previous government, officials' advice is that no further agreement on policy is necessary. However, I consider that it is prudent to advise Cabinet of the matters that I intend to include in the Bill.

8. The matters which I have agreed will be included in the Bill are covered below:

8.1. The Bill transfers Local Authority parking powers (such as the bylaw-making powers, and the appointment of parking enforcement officers) from the Transport Act 1962 to the Act. I have decided to continue with the official title of parking wardens and resisted local authority wishes to have parking wardens' powers extended. These changes will allow the Transport Act 1962 to finally be repealed.

Out of scope.
I would ask that Cabinet note my intention to include these matters, which are outlined in more detail in the attached Table One, in the Bill.

Out of scope.
Departmental consultation

12. The following agencies have been consulted on this paper: the New Zealand Police; Ministry of Agriculture and Forestry; the Treasury; Ministry of Economic Development; Department of Labour; Ministry of Justice; Department of Internal Affairs; Local Government New Zealand; Accident Compensation Corporation, and the New Zealand Transport Agency. In addition, the Department of the Prime Minister and Cabinet has been informed of this paper.

Financial implications

13. The implementation of the matters contained in this paper should impose no further cost on government.

Human rights implications

14. The proposals are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The proposals do not create any issues related to the Privacy Act 1993, the principles of the Treaty of Waitangi or international standards and obligations.

Legislative implications

15. The proposals outlined in this paper, that I have agreed will proceed, will be contained in a Land Transport Amendment Bill.

16. No new offences are required to support these changes and no fees and charges are required to support these changes.

Regulatory Impact Analysis

17. The matters covered in this paper were previously considered by government and were the subject of Regulatory Impact Analysis under that process. The decisions have not changed from when this was carried out and Regulatory Impact Statements were prepared for them. On this basis, the Treasury confirms that there is no need for any further analysis.

Consistency with government statement on regulation

18. I have considered the advice of my officials, and I am satisfied that the regulatory proposals recommended in this paper:

- are required in the public interest
- will deliver the highest net benefits of the practical options available
- are consistent with our commitments in the government statement: Better Regulation, Less Regulation.
Publicity

19. A communications strategy for the Bill is being prepared by my office, in conjunction with the Ministry of Transport. These matters will be included in that work.

Recommendations

20. It is recommended that the Committee:

1) note the items, outlined in the attached Table One, which I intend to include in the Land Transport Amendment Bill;

2) note that these items have been approved by the previous government;

3) note that these items will:

   (a) allow the transfer of existing sections of the Transport Act 1962, which will allow it to be repealed

   (b) improve the effectiveness of the Land Transport Act 1998

Out of scope.

Steven Joyce
Minister of Transport

Dated: 6/0
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**F. Road Controlling Authorities' existing bylaw-making powers on the use of roads under the Transport Act 1962 and Local Government Act 1974 will be:**

- Consolidated (and transferred) into the Land Transport Act 1998
- Rationalised and amalgamated into thematically related groups
- Phrased into more general terms to allow greater flexibility
- Extended to address unauthorised street racing, engine braking in urban areas, and regulate the use of vehicles on beaches.

CAB Min(07) 44/5
EDC Min (07) 28/2
[Recommendations 12, 17 and 18]

Out of scope.
J. Provide road controlling authorities with a general bylaw-making power on the use of roads, subject to:
   (a) it not being able to be used where there is a specific bylaw-making power to address the matter in question.
   (b) its use being restricted to matters of general purposes of a defined nature (for example, in the interests of road safety, or for protecting the environment), and without prejudice to the use of general bylaw-making power available under the Local Government Act 2002.

Out of scope.
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Consultation on Cabinet and Cabinet Committee Submissions

Certification by Department:

Guidance on consultation requirements for Cabinet/Cabinet committee papers is provided in the CabGuide (see Procedures: Consultation): http://www.cabguide.cabinetoffice.govt.nz/procedures/consultation

 Departments/agencies consulted: The attached submission has implications for the following departments/agencies whose views have been sought and are accurately reflected in the submission:
New Zealand Police; Ministry of Agriculture and Forestry; the Treasury; Ministry of Economic Development; Department of Labour; Ministry of Justice; Accident Compensation Corporation; Department of Internal Affairs; and the NZ Transport Agency

 Departments/agencies Informed: In addition to those listed above, the following departments/agencies have an interest in the submission and have been informed:

DPMC

Others consulted: Other interested groups have been consulted as follows:
Local Government NZ

Name, Title, Department: Christopher Foley, Principal Adviser, Ministry of Transport

Date: 26/05/2010

Certification by Minister:

Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet Committee.

The attached proposal:

Consultation at Ministerial level: □ has been consulted with the Minister of Finance (required for all submissions seeking new funding)

□ has been consulted with the following portfolio Ministers:

 √ did not need consultation with other Ministers

Discussion with National caucus:

□ has been or √ will be discussed with the government caucus

□ does not need discussion with the government caucus

Discussion with other parties:

□ has been discussed with the following other parties represented in Parliament:

□ Act Party □ Māori Party □ United Future Party

□ Other [specify]

√ will be discussed with the following other parties represented in Parliament:

√ Act Party □ Māori Party □ United Future Party

□ Other [specify]

□ does not need discussion with other parties represented in Parliament

Portfolio: TRANSPORT

Date: 16/10

Signature: [Signature]
Cabinet Business Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Land Transport Amendment Bill: Previous Decisions

Portfolio: Transport

On 8 June 2010, the Cabinet Business Committee:

1. noted that:

1.1 in September 2007 – September 2008, the previous government agreed to various amendments to the Land Transport Act 1998 [POL Min (07) 22/7, EDC Min (07) 28/3, POL Min (07) 28/10, POL Min (07) 28/11, CAB Min (07) 45/11, CAB Min (08) 2/4A, CBC Min (08) 17/10 and EDC Min (08) 17/9];

1.2 these decisions have yet to be implemented through legislation;

2. noted that the Minister of Transport (the Minister) has reviewed the decision referred to in paragraph 1.1 and proposes to proceed with some of these amendments in order to:

2.1 transfer existing sections of the Transport Act 1962, allowing for that legislation to be repealed;

2.2 improve the effectiveness of the Land Transport Act 1998;

3. confirmed the proposed amendments that will be included in the Land Transport Amendment Bill, as listed in Table 1 of the annex to this minute;

4. [omitted]

5. [omitted]

6. noted that the Land Transport Amendment Bill holds a category 2 priority on the 2010 Legislation Programme (must be passed in 2010);
invited the Minister to issue drafting instructions to the Parliamentary Counsel Office to incorporate the amendments referred to in paragraph 3 above into the Land Transport Amendment Bill.

Adrian MacGregor
Committee Secretary

Present:
Hon John Key (Chair)
Hon Bill English
Hon Simon Power
Hon Tony Ryall
Hon Judith Collins
Hon Anne Tolley
Hon Christopher Finlayson
Hon David Carter
Hon Steven Joyce
Hon Kate Wilkinson

Officials present from:
Office of the Prime Minister
Department of the Prime Minister and Cabinet

Distribution:
Cabinet Business Committee
Chief Executive, DPMC
Director PAG, DPMC
PAG Subject Advisor, DPMC
Secretary to the Treasury
Chief Executive, MED
Secretary for Justice
Secretary of Labour (ACC)
Chief Executive, ACC
Commissioner of Police
Minister of Agriculture
Director-General, MAF (Agriculture)
Minister of Transport
Secretary for Transport
Minister of Labour
Secretary of Labour
Minister of Local Government
Secretary for Internal Affairs (Local Government)
Chief Parliamentary Counsel
Legislation Coordinator
**TABLE ONE: PREVIOUSLY AGREED POLICY THAT WILL BE INCLUDED IN THE LAND TRANSPORT AMENDMENT BILL**

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F. Road Controlling Authorities’ existing law-making powers on the use of roads under the Transport Act 1962 and Local Government Act 1974 will be:

(a) consolidated (and transferred) into the Land Transport Act 1998
(b) rationalised and amalgamated into thematically related groups
(c) phrased into more general terms to allow greater flexibility.
(d) extended to address unauthorised street racing, engine breaking in urban areas, and regulate the use of vehicles on beaches.

CAB MIN(07) 44/5
EDC Min (07) 28/2
[Recommendations 12, 17 and 18]

Out of scope.
### Annex to CBC Min (10) 7/8

**J.** Provide road controlling authorities with a general bylaw-making power on the use of roads, subject to:

(a) it not being able to be used where there is a specific bylaw-making power to address the matter in question.

(b) its use being restricted to matters of general purposes of a defined nature (for example, in the interests of road safety, or for protecting the environment), and without prejudice to the use of general bylaw-making power available under the Local Government Act 2002.

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Out of scope.
Out of scope.
Cabinet

Minute of Decision

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Land Transport Amendment Bill: Previous Decisions

Portfolio: Transport

On 14 June 2010, following reference from the Cabinet Business Committee, Cabinet:

1. noted that:

1.1 in September 2007 – September 2008, the previous government agreed to various amendments to the Land Transport Act 1998 [POL Min (07) 22/7, EDC Min (07) 28/3, POL Min (07) 28/10, POL Min (07) 28/11, CAB Min (07) 45/11, CAB Min (08) 2/1A, CBC Min (08) 17/10 and EDC Min (08) 17/0];

1.2 these decisions have yet to be implemented through legislation;

2. noted that the Minister of Transport (the Minister) has reviewed the decisions referred to in paragraph 1.1 and proposes to proceed with some of these amendments in order to:

2.1 transfer existing sections of the Transport Act 1962, allowing for that legislation to be repealed;

2.2 improve the effectiveness of the Land Transport Act 1998;

3. confirmed the proposed amendments that will be included in the Land Transport Amendment Bill, as listed in Table 1 of the annex to this minute;

4. Out of scope.

6. noted that the Land Transport Amendment Bill holds a category 2 priority on the 2010 Legislation Programme (must be passed in 2010);
invited the Minister to issue drafting instructions to the Parliamentary Counsel Office to incorporate the amendments referred to in paragraph 3 above into the Land Transport Amendment Bill.

Rebecca Kitteridge
Secretary of the Cabinet

Reference: CAB (10) 285; CBC Min (10) 7/8

Secretary's note: This minute replaces CBC Min 910) 7/8. A Cabinet minute has been issued for this item as it involves revising earlier Cabinet decisions (see paragraph 5).

Distribution:
Prime Minister
Chief Executive, DFMC
Director PAG, DFMC
Minister of Finance
Secretary to the Treasury
Minister for Economic Development
Chief Executive, MED
Minister of Justice
Secretary for Justice
Minister for ACC
Secretary of Labour (ACC)
Chief Executive, ACC
Minister of Police
Commissioner of Police
Minister of Agriculture
Director-General, MAF (Agriculture)
Minister of Transport
Secretary for Transport
Minister of Labour
Secretary of Labour
Minister of Local Government
Secretary for Internal Affairs (Local Government)
Chief Parliamentary Counsel
Legislation Coordinator
Secretary, CBC
### TABLE ONE: PREVIOUSLY AGREED POLICY THAT WILL BE INCLUDED IN THE LAND TRANSPORT AMENDMENT BILL

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F. Road Controlling Authorities' existing by-law-making powers on the use of roads under the Transport Act 1962 and Local Government Act 1974 will be:

(a) consolidated (and transferred) into the Land Transport Act 1998
(b) rationalised and amalgamated into thematically related groups
(c) phrased into more general terms to allow greater flexibility
(d) extended to address unauthorised street racing, engine braking in urban areas, and regulate the use of vehicles on beaches.

CAB MIN(07) 44/5
EDC Min (07) 28/2
[Recommendations 12, 17 and 18]

Out of scope.
**IN CONFIDENCE**

| J. Provide road controlling authorities with a general bylaw-making power on the use of roads, subject to: |
| (a) Not being able to be used where there is a specific bylaw-making power to address the matter in question. |
| (b) Its use being restricted to matters of general purposes of a defined nature (for example, in the interests of road safety, or for protecting the environment), and without prejudice to the use of general bylaw-making power available under the Local Government Act 2002. |

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**Recommended Actions**

- CAB MIN(07) 44/5
- EDC Min (07) 28/2
- [Recommendations 19, 20]

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Out of scope.
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Out of scope.
Land Transport (Road Safety and Other Matters) Amendment Bill

Approval for Introduction

Purpose

This paper seeks approval for the introduction of the Land Transport (Road Safety and Other Matters) Amendment Bill (the Amendment Bill).

Previous Consideration

In 2007, 2009 and 2010, the previous government, the Cabinet Economic Growth and Infrastructure Committee, the Cabinet Business Committee and Cabinet, made a number of decisions associated with road safety for inclusion in the Amendment Bill. [POL Min (07) 22/7, EGI Min (09) 8/2, EGI Min (10) 6/4, CBC Min (10) 7/8, EGI Min (10) 15/14, CAB Min (10) 26/9 and CAB Min (10) 26/10]

Summary

The Amendment Bill gives effect to the above decisions, the main being the policy decisions arising from the government’s Safer Journeys road safety strategy.

The Amendment Bill repeals the Transport Act 1962, amends the Land Transport Act 1998, and provides that a number of Act, regulations and rules are consequentialy amended.

The significant aspects of the Amendment Bill are set out in recommendation 3 of this summary top.

Regulatory Impact Analysis

A Regulatory Impact Statement was prepared for the policy approval stage, prior to the preparation of drafting instructions on the amendment bill. A URL to the RIS is included in the Amendment Bill’s explanatory note.

Compliance

There are no outstanding non-compliance issues.

Timing Issues

Introduced: 13 September 2010

Referred: Trade and Industrial Relations Committee for consideration

Enacted: by 1 April 2011

Announcement

None.
Consultation

Paper prepared by Transport, Health, Justice, Corrections, Police, NZTA, ACC, LGNZ, Education, DoL, MAF, DIA, Senior Citizens, Disability Issues, MED, PIA, Youth Development, MSD, TPK, Tourism and Treasury were consulted. DPMC was informed.

The Minister of Transport indicates that discussion has been made with the government caucus and with other parties represented in Parliament.

The Minister of Transport recommends that the Committee:

1. note that the Land Transport (Road Safety and Other Matters) Amendment Bill holds a category 2 priority on the 2010 Legislation Programme;

2. note that in 2007, 2009 and 2010, the previous government, the Cabinet Economic Growth and Infrastructure Committee, the Cabinet Business Committee and Cabinet, made a number of decisions associated with road safety [POL Min (07) 22/7, EGI Min (09) 8/2, EGI Min (10) 6/4, CBC Min (10) 7/8, EGI Min (10) 15/14, CAB Min (10) 26/9, and CAB Min (10) 26/10];

3. note that the Amendment Bill gives effect to the decisions referred to in paragraph 2 above, and:

3.9 provides for the transfer of existing local council traffic and bylaw-making powers into the principal Act from the Transport Act 1962, and related transport sections from the Local Government Act 1974;

Out of scope.
3.13 includes other amendments to clarify and enhance the effectiveness of existing provisions in the principal Act;

4 approve for introduction the Land Transport (Road Safety and Other Matters) Amendment Bill [PCO 13006/16.0], subject to the final approval of the government caucus and sufficient support in the House;

5 agree that the Amendment Bill be introduced on 13 September 2010;

6 agree that the government propose that the Amendment Bill be:

6.1 referred to the Transport and Industrial Relations Committee;

6.2 enacted by 1 April 2011.
Distribution:
Cabinet Legislation Committee
Office of the Prime Minister
Chief Executive, DPMC
Secretary to the Treasury
Chief Executive, MED
Secretary for Justice
Minister for ACC
Chief Executive, ACC
Secretary of Labour, ACC
Minister of Health
Director-General of Health
Minister of Police
Commissioner of Police
Chief Executive, Department of Corrections
Minister of Agriculture
Director-General, MAP (Agriculture)
Minister of Transport
Secretary for Transport
Minister of Pacific Island Affairs
Chief Executive, Ministry of Pacific Island Affairs
Minister for Social Development and Employment
Chief Executive, MSD (Youth Development)
Secretary of Labour
Minister for Senior Citizens
Chief Executive, MSD (Senior Citizens)
Minister of Local Government
Secretary for Internal Affairs (Local Government)
Minister of Maori Affairs
Chief Executive, Te Puni Koaki
Minister for Disability Issues
Chief Executive, MSD (Disability Issues)
Chief Parliamentary Counsel
Clerk of the House of Representatives
Chair  
Cabinet Legislation Committee

LAND TRANSPORT (ROAD SAFETY AND OTHER MATTERS) AMENDMENT BILL: APPROVAL FOR INTRODUCTION

Proposal
1. I propose that the Cabinet Legislation Committee approve the Land Transport (Road Safety and Other Matters) Amendment Bill (the Bill) for introduction.

Executive summary
2. The Bill amends the Land Transport Act 1998 (the principal Act) and makes a number of consequential amendments to other Acts and regulations. The main purpose of the Bill is to give effect to road safety policy arising from the government's Safer Journeys road safety strategy:
   - make other minor amendments to improve the effectiveness of the principal Act.

Policy
5. The Bill amends the principal Act and consequentially amends a number of other Acts and regulations. The main purpose of the Bill is to enact a number of provisions relating to road safety that have been submitted to Cabinet and approved as part of the following policy papers:
   - [Out of scope.]
Decisions carried over from the previous government and other minor amendments

23. The Bill also includes minor amendments to enhance the enforceability of existing provisions in the principal Act, and to provide for the transfer of existing local council traffic and bylaw-making powers into the principal Act from the Transport Act 1962, and related transport sections from the Local Government Act 1974. The Transport Act 1962 will be repealed.

Out of scope.
Need for legislation

32. A Bill is required to give effect to the policy outlined above because amendments are required to existing primary legislation.

Out of scope.
Regulatory Impact Analysis

33. A Regulatory Impact Statement (RIS) was prepared in accordance with the necessary requirements and submitted at the time Cabinet approvals of the policy relating to the Bill was sought [EGI Min (10) 6/4; CAB min (10) 12/8; CBC Min (10) 7/8; CAB Min (10) 21/1C; EGI Min (10) 15/14; CAB Min (10) 24/6; CAB Min (10) 26/9; CAB Min (10) 26/10 and POL Min (07) 22/7 refer].

Compliance

34. The Bill complies with the:

7.1 principles of the Treaty of Waitangi
7.2 rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
7.3 principles and guidelines set out in the Privacy Act 1993
7.4 relevant international standards and obligations

Consultation

35. The following government departments and public bodies have been consulted on relevant parts of the Bill and their comments, if any, have been incorporated: Ministry of Health, Ministry of Justice, Department of Corrections, Police, NZTA, the Accident Compensation Corporation, Local Government New Zealand, Ministry of Education, Department of Labour, Ministry of Agriculture and Forestry, Department of Internal Affairs, Office for Senior Citizens, Office for Disability Issues, Ministry of Economic Development, Ministry of Pacific Island Affairs, Ministry of Youth Development, Ministry of Social Development, Te Puni Kōkiri, Ministry of Tourism and the Treasury. The Department of the Prime Minister and Cabinet has been informed.

Binding on the Crown


Creating new agencies or amending law relating to existing agencies

37. The Bill will not create any new agencies and will not amend the existing coverage of the Ombudsman Act 1975, the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987.

Allocation of decision-making powers

38. The Land Transport (Road Safety and Other Matters) Amendment Bill involves the allocation of decision-making powers between the executive, the courts and tribunals. The Bill allocates powers to the Minister of Transport, local authorities,
the NZTA, road controlling authorities, the Police, parking wardens, airport authorities, medical professionals and the courts.

39. The process outlined above applies the criteria relating to the qualifications and responsibilities of decision makers and the procedures they follow as set out in the LAC Guidelines: Guidelines on Process and Content of Legislation.

Associated regulations

40. An Order in Council will be required to bring clauses 5, 18, 22, 24, 28, 36, 46(2), 47, 50(2), 51, 56, 60 and 61 into force. Some consequential amendments to regulations will also have to be brought into force by Order in Council. The Orders in Council are likely to come into force 12 to 18 months after the Bill is passed and are not expected to be a significant drafting task.

Deemed regulations

41. The Bill contains a new provision for the making of ordinary rules by the Governor-General through Order in Council. Ordinary rules are usually made by the Minister of Transport, and are deemed regulations. However, ordinary rules made by the Governor-General will be statutory regulations.

Definition of Minister/department

42. The Bill does not contain definitions of a Minister, a department or agency, or a Chief Executive. These definitions are already contained in the principal Act. The Director of Security is defined in clause 11 by reference to the New Zealand Security Intelligence Service Act 1969.

Commencement of legislation

43. The Bill is expected to be enacted by 1 April 2011.

44. Clauses 6, 12, 14, 15, 21, 23, 26, 30, 38 to 43, 50(1), 54, 65, 89 and 90 will come into force 90 days after the date of Royal assent.

45. Clauses 31 to 35, and 37 should come into force 180 days after the date of Royal assent.

46. Clauses 5, 16, 22, 24, 28, 36, 46(2), 47, 50(2), 51, 56, 60 and 61 will be brought into force by Order in Council.

47. The remaining provisions will come into force the day after the date of Royal assent.

Parliamentary stages

48. The Bill should be introduced in September 2010 and passed, if possible, before 1 April 2011.

49. It is proposed that the Bill be referred to the Transport and Industrial Relations Committee.
50. The Minister responsible for the Bill will be the Minister of Transport.

Recommendations

51. The Minister of Transport recommends that the Committee:

1) note that the Lanc Transport (Road Safety and Other Matters) Amendment Bill holds priority two on the Legislation Programme;

2) note that the Bill:

   - ... ...
   - ... ...
   - ... ...
   - ... ...
   - ... ...
   - ... ...

2.9. provides for the transfer of existing local council traffic and bylaw-making powers into the principal Act from the Transport Act 1962, and related transport sections from the Local Government Act 1974;

   - ... ...
   - ... ...
   - ... ...

Out of scope.
2.13 includes other amendments to clarify and enhance the effectiveness of existing provisions in the principal Act;

3) **approve** for introduction the Land Transport (Road Safety and Other Matters) Amendment Bill, subject to the final approval of the government caucus;

4) **agree** that the Bill be introduced on 13 September 2010;

5) **agree** that the government propose that the Bill be:

5.1 referred to the Transport and Industrial Relations Committee for consideration;

5.2 enacted by 1 April 2011.

[Signature]

Hon Steven Joyce
Minister of Transport

Dated: 6/9/10
Consultation on Cabinet and Cabinet Committee Submissions

Certification by Department:

Guidance on consultation requirements for Cabinet/Cabinet committee papers is provided in the CabGuide (see Procedures: Consultation): http://www.cabguide.cabinetoffice.govt.nz/procedures/consultation

Departments/agencies consulted: The attached submission has implications for the following departments/agencies whose views have been sought and are accurately reflected in the submission:

Departments/agencies informed: In addition to those listed above, the following departments/agencies have an interest in the submission and have been informed:
Department of the Prime Minister and Cabinet

Others consulted: Other interested groups have been consulted as follows:

Name, Title, Department: Judy Voyce, Solicitor, Ministry of Transport

Date: 2/9/10  Signature: Judy Voyce

If this form covers two pages ensure that both certification sections are completed and attached at the back of the Cabinet/committee submission.
**Certification by Minister:**

Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet committee.

**The attached proposal:**

<table>
<thead>
<tr>
<th>Consultation at Ministerial level</th>
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<td>☑ United Future Party</td>
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Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Land Transport (Road Safety and Other Matters) Amendment Bill: Approval for Introduction

Portfolio: Transport

On 9 September 2010, the Cabinet Legislation Committee:

1. noted that the Land Transport (Road Safety and Other Matters) Amendment Bill holds a category 2 priority on the 2010 Legislation Programme;

2. noted that in 2007, 2009 and 2010, the previous government, the Cabinet Economic Growth and Infrastructure Committee, the Cabinet Business Committee and Cabinet, made a number of decisions associated with road safety [POL Min (07) 22/7, EGI Min (09) 8/2, EGI Min (10) 6/4, CBC Min (10) 7/8, EGI Min (10) 15/14, CAB Min (10) 26/9 and CAB Min (10) 26/10];

3. noted that the Amendment Bill gives effect to the decisions referred to in paragraph 2 above, and:

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Out of scope.
3.9 provides for the transfer of existing local council traffic and bylaw-making powers into the principal Act from the Transport Act 1962, and related transport sections from the Local Government Act 1974;

3.13 includes other amendments to clarify and enhance the effectiveness of existing provisions in the principal Act;

4 approved for introduction the Land Transport (Road Safety and Other Matters) Amendment Bill [PCO 13006/16.0], subject to the final approval of the government caucus and sufficient support in the House;

5 agreed that the Amendment Bill be introduced on 13 September 2010;

6 agreed that the government propose that the Amendment Bill be:

6.1 referred to the Transport and Industrial Relations Committee;

6.2 enacted by 1 April 2011.

Sam Gleisner
Committee Secretary

Reference: LEG (10) 155

Present:
Hon Simon Power (Chair)
Hon Judith Collins (part of item)
Hon Christopher Finlayson
Hon Nathan Guy

Distribution: (see over)
Distribution:
Cabinet Legislation Committee
Office of the Prime Minister
Chief Executive, DPMC
Leotitia Seales, DPMC
General Manager, Ministry of Tourism
Secretary to the Treasury
Chief Executive, MED
Secretary for Justice
Minister for ACC
Chief Executive, ACC
Secretary of Labour, ACC
Minister of Health
Director-General of Health
Minister of Police
Commissioner of Police
Chief Executive, Department of Corrections
Minister of Agriculture
Director-General, MAF (Agriculture)
Minister of Transport
Secretary for Transport
Minister of Pacific Island Affairs
Chief Executive, Ministry of Pacific Island Affairs
Minister for Social Development and Employment
Chief Executive, MSD (Youth Development)
Secretary of Labour
Minister for Senior Citizens
Chief Executive, MSD (Senior Citizens)
Minister of Local Government
Secretary for Internal Affairs (Local Government)
Minister of Maori Affairs
Chief Executive, Te Puni Kokiri
Minister for Disability Issues
Chief Executive, MSD (Disability Issues)
Chief Parliamentary Counsel
Clerk of the House of Representatives
Cabinet

Minute of Decision

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Report of the Cabinet Legislation Committee: Period Ended 10 September 2010

On 13 September 2010, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 10 September 2010.

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Distribution:
Cabinet Legislation Committee
Chief Executive, DPMC
Director PAG, DPMC
General Manager, Ministry of Tourism
Secretary to the Treasury
Chief Executive, MED
Secretary for Justice
Chief Executive, MED (Commerce)
Minister for ACC
Chief Executive, ACC
Secretary of Labour, ACC
Minister of Health
Director-General of Health
State Services Commissioner
Minister of Police
Commissioner of Police
Chief Executive, Department of Corrections
Minister of Education
Secretary for Education
Chief Review Officer, Education Review Office
Minister of Agriculture
Director-General, MAF (Agriculture)
Minister of Foreign Affairs
Secretary of Foreign Affairs and Trade
Minister of Transport
Secretary for Transport
Minister of Pacific Island Affairs
Chief Executive, Ministry of Pacific Island Affairs
Minister for Social Development and Employment
Chief Executive, MSD (Youth Development)
Secretary of Labour
Minister of Customs
Comptroller of Customs
Minister for Senior Citizens
Chief Executive, MSD (Senior Citizens)
Minister of Local Government
Secretary for Internal Affairs (Local Government)
Minister of Maori Affairs
Chief Executive, Te Puni Kokiri
Minister for Disability Issues
Chief Executive, MSD (Disability Issues)
Minister of Revenue
Commissioner of Inland Revenue
Chief Parliamentary Counsel
Secretary, LEG
MINISTRY OF TRANSPORT REPORT

Subject: UNIFORMED LEGAL ROADS AND WALKING ACCESS

Date: 6 May 2008 Docmin No.: WGTA10054

Attention: Hon Annette King (Minister of Transport)

Purpose of Report

1. This note is an update of WGTA 9853, to brief you for a meeting on 13 March 2008, with Hon Nanaia Mahuta, Minister of Local Government; Hon Damien O'Connor, Minister of Rural Affairs and Hon David Parker, Minister of Land Information. The purpose of the meeting is to agree on how best to integrate two streams of work affecting the uniformed legal roads.

Executive Summary

2. There are two interrelated studies, at different stages, of aspects of the uniformed roads.

2.1. A review of walking access, established by the Ministry of Agriculture and Fisheries (MAF) in August 2005. This review is considering recreational walking access over private land, using uniformed roads, reserves and negotiated access. MAF is proposing legislation which will affect the uniformed roads.

2.2. A proposed review by the Department of Internal Affairs (DIA) of the future ownership, management and use of uniformed roads. This review may also lead to legislation, for example to control access or simplify procedures for permanently closing (stopping) uniformed roads.

3. MAF appointed a Walking Access Consultation Panel (the Panel) in August 2005, to review options for improving recreational access. The Panel reported in 2007, and on 15 August 2007 POL recorded decisions which included directing MAF to set up an establishment unit and advisory board for walking access, and develop a New Zealand Access Strategy (POL Min (07) 18/20 refers). Other relevant decisions are that POL:

3.1. (22) directed MAF, the Department of Internal Affairs, DOC and the Ministry of Transport, in consultation with Local Government New Zealand (LGNZ), to report to POL by 30 June 2008 on:

(a) (22.1) the proposal that territorial authorities should generally be required to retain uniformed legal roads for possible future use by the public;

(b) (22.2) the proposal that territorial authorities should be provided with more powers to manage the use of uniformed legal roads, provided that this is associated with a duty to keep uniformed legal roads clear of obstructions to appropriate uses;

(c) (22.3) the proposal that consideration be given to stopping… some uniformed legal roads to facilitate an exchange for alternative access.
3.2. (23) noted that any recommendations made in the June 2008 report referred to in paragraph 22 may only provide interim solutions pending the outcome of the [DIA review], which will consider what legislative changes, if any, are desirable for the future ownership, management and use of unformed legal roads.

3.3. (24) agreed that the establishment unit:

(a) (24.1) work with territorial authorities and central government agencies to develop consistent and appropriate policies for managing unformed legal roads for access;

(b) (24.2) consider developing national guidelines on the administration of unformed legal roads for access.

Unformed roads

4. There are an estimated 57 000 kilometres of unformed road (over half the total length of formed roads), mostly over a century old. Some are impractical for public use, some are unlikely to be useful and some were only intended as walking tracks.

5. Unformed roads run along beaches and cross most of all types of rural and conservation land. They have the legal status of formed roads, including traffic laws and public access rights. Local authorities are not obliged to maintain them but are obliged to keep them obstruction-free. Some unformed roads are used for a variety of roading purposes but many are obstructed by private fences or locked gates. Affected landowners could probably argue an implied consent for this situation, which would not affect ownership but might justify some compensation.

Public pressures

6. Some owners of off-road vehicles use unformed roads for recreation. Their activities sometimes include cutting fences, and causing other damage. Some other recreational groups use similar practices but generally cause less damage.

7. Consumer magazine reported on ‘paper’ roads in September 2007. Consumer noted that some landowners block public access deliberately; some users fail to follow basic practices such as controlling dogs; some councils fail to keep roads clear, even when requested to do so; and some roads are obstructed by fences, locked gates, crops, forests and even buildings.

8. Safety is sometimes an issue, especially for unformed roads on beaches.

Land Information New Zealand

9. Land Information New Zealand (LINZ) holds records on all unformed roads. This information is already publicly available but officials understand that LINZ is planning to publish unformed road locations in a more readily accessible form. This is likely to increase public pressures for access.

Ministry of Agriculture and Forestry

10. The Panel has proposed that new walking access over private land be negotiated with affected landowners. Indicative funding is $2–3 million per year. Three proposed priorities are obtaining access along private foreshores, restoring access along rivers and streams where it has been destroyed by erosion, and providing continuity of access. Access negotiations will be easier where there is an unformed road which can be either used or stopped in exchange for other access.

11. A particular cause of concern is the Panel’s recommendation that “a remedy be made available to the public that will oblige territorial authorities to require the removal of unlawful obstructions on unformed legal roads, particularly if the obstructions prevent foot passage.” (POL (07) 249)
12. Other organisations are also developing public access routes. They include the Department of Conservation, local authorities and the Te Araroa Trust, which is developing a walking trail throughout New Zealand.

Local Government New Zealand

13. LGNZ have expressed concern that walking access studies are running ahead of DIA’s broader review. At the Central and Local Government Forum in December 2007, LGNZ noted that:

13.1. the outcomes of the walking access policy work have the potential to impose significant costs on local communities if local authorities do not have the tools to manage the land properly; and

13.2. the outcomes of the walking access policy work may lead to decisions that will pre-empt and constrain DIA’s review.

Proposed course of action

14. DIA proposes that a Cabinet paper (Review of Unformed Roads - Principles and Scope), seeking agreement to the purpose and principles of a broad review be considered by POL in July 2008. This paper could also be signalled in MAF’s report back in June, which would provide a clear link between the two papers.

15. The Ministry of Transport (the Ministry) supports DIA’s proposal. A particular concern is that any interim measures should not disturb the current balance of uses on the bulk of unformed roads, including private use. Any measures should not impose new costs on the local authorities. However, these restrictions could be relaxed for roads under development for walking access.

Recommendations

We recommend that you:

(a) Note the concerns of DIA, LGNZ and the Ministry. Yes/No
(b) Encourage your colleagues to agree to a clear link between the MAF and DIA. Yes/No reviews and avoid pre-empting decisions.

Priority Routine Security Level In-confidence Deadline 7 May 2008

Contact for telephone discussion (if required)

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Direct Line</th>
<th>Telephone After Hours</th>
<th>Suggested First Contact</th>
</tr>
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<tbody>
<tr>
<td>Mike Curran</td>
<td>Manager, Road, Rail and</td>
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<td></td>
<td>Yes</td>
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<td></td>
<td>Logistics</td>
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Withheld under section 9(2)(a) of the Official Information Act 1982

Mike Curran
Manager, Road, Rail and Logistics

MINISTER’S COMMENTS:

MINISTER’S SIGNATURE:

DATE:

- Noted
- Seen
- Approved
- Needs Change
- Referred to
- Overtaken by events
- Withdrawn
- Not Seen by Minister
- Overtaken by events
MINISTRY OF TRANSPORT REPORT

Subject: WALKING ACCESS AND UNFORMED LEGAL ROADS: REGULATION OF MOTOR VEHICLE ACCESS

Date: 24 April 2009 Docmin No.: WGTA 11 270

Attention: Hon Steven Joyce (Minister of Transport)

Purpose of Report

1. To brief you on the paper, Walking Access: Unformed Legal Roads – regulation of motor vehicle access, from the Minister of Agriculture, Hon David Carter. It is to be discussed at the Cabinet Economic Growth and Infrastructure Committee meeting on 29 April 2009.

Executive Summary

2. The paper contains two substantive recommendations. In summary, they are that:

   2.1. The NZ Walking Access Commission (the Commission), in association with others (but excluding the Ministry), develops guidelines for local government on the administration of unformed roads. Guidelines are to cover the management of impediments to walking access and procedures for permanent closure.

   2.2. A Land Transport Amendment Bill (unspecified in the paper) stipulates that bylaw-making powers may restrict vehicle use on defined unformed roads.

3. The Ministry sees no difficulty with the paper’s first recommendation (2.1 above).

4. The Land Transport Amendment Bill that the second recommendation (2.2 above) appears in is of consequence, although a Bill is not specified in the paper. The Land Transport Amendment Bill (No 4), currently at select committee, is not an appropriate means of addressing the bylaw-making power. The change would be outside the scope of that Bill. The Land Transport Amendment Bill (No 5), which is yet to be introduced, would be a more appropriate place to make the amendment, as it will deal with a number of transport-related bylaw-making processes.

Background

5. The Walking Access Commission is an independent body set up to promote walking access to public land. It is hosted by the Ministry of Agriculture and Forestry (MAF). One proposed method of access is on unformed legal roads.

6. The total length of unformed roads (also known as paper roads) is more than half the total length of formed roads. Many are indistinguishable from private land and are obstructed by fences, often without gates. Some are also obstructed by, for example, natural features, forestry, vineyards and even buildings.

WGTA 11 270
7. Traffic law makes no distinction between formed and unformed roads.

8. Off-road vehicle drivers are often eager to use unformed roads. Some even cut fences. There have been some motor vehicle crashes, particularly on beaches.

9. Local authorities are required to keep unformed roads free of obstructions but they tend to be very reluctant to do so. Their concerns include possibly substantial cost risks, for fencing, maintenance (which might generate an ongoing commitment), barriers to keep off-road vehicles out, and stock losses.

10. MAF has consulted with the Ministry of Transport on bylaw-making powers for unformed roads. MAF originally proposed powers which could be used only where vehicle use risked environmental damage. However, it was agreed that bylaws can also be used where there are safety or damage risks.
Recommendations

The recommendations are that you:

(a) Note the contents of this briefing on the paper Walking Access: Uniformed Legal Roads – regulation of motor vehicle access (the Paper), to be discussed at the Cabinet Economic Growth and Infrastructure Committee meeting on 29 April 2009.

(b) Note that the Ministry of Transport sees no problem with the development of guidelines to cover the management of impediments to walking access and procedures for permanent closure, as recommended in the Paper.

(c) Note the Ministry of Transport recommends that bylaw-making powers to enable restriction of vehicle use on defined uniformed roads, recommended in the Paper, not be included in the Land Transport Amendment Bill (No 4), and that the Land Transport Amendment Bill (No 5) would be a more appropriate place for the amendment.

(d) Note the Paper is attached as Appendix One.

Priority Routine Security Level N/A Deadline 23/04/09

Contact for telephone discussion (if required)

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Telephone</th>
<th>Suggested First Contact</th>
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</thead>
<tbody>
<tr>
<td>Kerry Wood</td>
<td>Senior Adviser, Road Rail &amp; Logistics</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>Mike Curran</td>
<td>Manager, Road Rail &amp; Logistics</td>
<td>[Redacted]</td>
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</table>

Withheld under section 9(2)(a) of the Official Information Act 1982

Kerry Wood
Senior Adviser, Road Rail & Logistics

Wayne Donnelly
General Manager, Strategy & Sustainability

MINISTER'S COMMENTS:

MINISTER'S SIGNATURE:

DATE:

☐ Noted       ☑ Seen       ☐ Approved
☐ Needs Changes ☑ Referred to ☐ Overtaken by events
☐ Withdrawn   ☐ Not Seen by Minister
Appendix One

Walking Access: Unformed Legal Roads – regulation of motor vehicle access, from the Minister of Agriculture, Hon David Carter
Walking Access: Unformed Legal Roads: Regulation of Motor Vehicle Access

Portfolio: Agriculture

Purpose:
This paper proposes that, when bylaw-making powers in respect of roads are consolidated, they provide for the regulation of motor vehicle access to unformed legal roads.

Previous Consideration:
In July 2008, the previous government agreed that officials would report back by 31 March 2009 on the need to enable territorial authorities to make bylaws restricting the use of motor vehicles on unformed legal roads [POL Min (08) 1/13].

Summary:
Unformed legal roads (sometimes referred to as ‘paper roads’) are vested in territorial authorities. Members of the public have a common law right to be on unformed legal roads without hindrance, subject to any statutory regulation that may apply.

Four wheel drive enthusiasts commonly use unformed legal roads for recreational purposes, and unformed legal roads can also provide important access routes to rivers, lakes and the coast.

Currently, the power of territorial authorities to make bylaws to restrict the use of motor vehicles on unformed legal roads is unclear. It is proposed that the bylaw making powers be clarified, to provide specifically for the regulation of motor vehicle access on unformed legal roads for the purpose of protecting the environment, protecting the road and the adjoining land from damage, and protecting the safety of road users.

Baseline Implications:
None.

Legislative Implications:
In December 2007, the previous government agreed that the bylaw making powers on the use of roads currently available to road controlling authorities be consolidated and transferred to the Land Transport Act 1998 [EDC Min (07) 28/3]. A Land Transport Amendment Bill (No 4) is currently before the Transport and Industrial Relations Committee and due to be reported to the House by 30 June 2009.

Timing Issues:
None indicated.
Announcement

None.

Consultation

Paper prepared by MAF. DIA, Transport, LINZ, Local Government New Zealand and the Walking Access Commission were consulted.

The Minister of Agriculture indicates that the Minister of Transport was consulted, and that discussion is not required with the government caucus or with other parties represented in Parliament.

The Minister of Agriculture recommends that the Committee:

1 note that there is a need for interim measures to clarify the powers of territorial authorities to regulate the inappropriate use of motor vehicles on unformed legal roads;

2 agree that the bylaw-making powers in respect of roads to be included in a proposed Land Transport Amendment Bill specify that bylaws may restrict the use of motor vehicles on defined unformed legal roads for the purpose of:

2.1 protecting the environment;

2.2 protecting the road and the adjoining land from damage;

2.3 protecting the safety of road users;

3 invite the Minister of Agriculture to issue drafting instructions to the Parliamentary Counsel Office to give effect to paragraph 2.

Janine Harvey
Committee Secretary

Distribution:
Cabinet Economic Growth and Infrastructure Committee
Office of the Prime Minister
Chief Executive, DPMC
John Crawford, DPMC
PAG Subject Advisor, DPMC
Secretary to the Treasury
Jeremy Corbin, Treasury
Chief Executive, MED
Lewis Holden, MED
Minister for Treaty of Waitangi Negotiations
Director, Office of Treaty Settlements
Director-General, MAF (Agriculture)
Paul Stocks, MAF
Secretary for Transport
Minister for Land Information
Chief Executive, Land Information New Zealand
Minister of Local Government
Secretary for Internal Affairs (Local Government)
Chief Executive, Te Puni Kokiri
Chief Parliamentary Counsel
Legislation Coordinator
Office of the Minister of Agriculture

Chair
Cabinet Economic Growth and Infrastructure Committee

Walking Access: Unformed Legal Roads – regulation of motor vehicle access

Proposal

1. This paper recommends that when the territorial authority and the New Zealand Transport Agency bylaw-making powers in respect of roads are consolidated, they provide specifically for the regulation of motor vehicle access to unformed legal roads in circumstances where this risks serious damage to the environment or to the safety of road users.

Background

2. The land comprising public roads, other than national highways, is vested in territorial authorities. Unformed legal roads (sometimes referred to as paper roads) have the same legal status as formed public roads. That is, there is a common law right for the public to pass and re-pass without hindrance subject to any statutory regulation that may apply. In general, this right to pass and re-pass includes the use of motor vehicles.

3. The previous government had agreed that officials should report by 31 March 2009 on the need to clarify the scope for territorial authorities to make bylaws restricting motor vehicle use on specific roads where there was a risk of environmental damage. (POL Min (08) 11/13)

4. The issue of vehicle use of unformed legal roads arose in the context of the walking access policy. Unformed legal roads had been identified as one potential means of improving walking access. Territorial authorities had expressed concern that identifying unformed legal roads for walking access risked encouraging access with motor vehicles in circumstances where this could damage the environment or pose safety concerns.

Bylaw-making powers under the Transport Act

5. In 2007, the Ministry of Transport reviewed the Transport Act 1962 because this Act is due to expire on 1 July 2009. Its provisions have been largely superseded by the Land Transport Act 1998 but, still relevant, are its prescription of a range of matters about which territorial authorities and the New Zealand Transport Agency can make bylaws relating to the use of roads under their control. These provisions are further supplemented by bylaw-making
powers under the Local Government Act 1974 and by some general bylaw-making powers under the Local Government Act 2002.

6. The review of the Transport Act 1962 provided an opportunity to reconcile its bylaw-making powers on the use of roads with those under the Local Government Act 1974 and to consolidate them under either transport or local government legislation. The conclusion reached was that the bylaw-making provisions under the Transport Act 1962 and Local Government Act 1974 should be consolidated into land transport legislation in the interest of a coherent and consistent bylaw-making regime.

7. This conclusion was accepted by the Cabinet Economic Development Committee (EDC) at its meeting on 30 November 2007. The agreed approach for the changes arising from the review of the Transport Act 1962 is a Land Transport Amendment Bill. However, a Bill proposing these changes will not be progressed before 1 July 2009, the expiry date of the Transport Act 1962. For this reason the Minister of Transport intends to introduce a Supplementary Order Paper to the Land Transport Amendment Bill (No. 4), currently before Parliament, amending the expiry provisions of the Transport Act 1962 until such time as its substantive provisions can be incorporated into other legislation.

Comment

8. The concern of territorial authorities that the use of unformed legal roads for walking access may encourage the use of motor vehicles on terrain that is susceptible to damage or is not safe for vehicle use needs to be addressed. The risk of damage is not only to the unformed road itself and the underlying land, but also to the land adjoining the road. Vehicles are liable to stray off unformed legal road because, generally, its margins are not clearly delineated, the adjoining land may offer an easier route, and vehicles are liable to try to bypass damage caused by previous vehicles.

9. The extent to which territorial authorities may regulate the use of unformed legal roads by motor vehicles is unclear. The Dunedin City Council, has made bylaws under the bylaw-making powers in section 72 of the Transport Act 1962 to restrict the use of some specific unformed legal roads near the city that were being damaged by four wheel drive vehicle use. The validity of using these powers in this way is unclear, as they seem to be aimed at specified classes of motor vehicles rather than motor vehicles in general.

10. It is, therefore, important that the power for territorial authorities to make bylaws that restrict the inappropriate use of unformed legal roads by motor vehicles is clarified.

11. Remaking and consolidating the bylaw-making powers relating to roads provides the opportunity to ensure that there is an appropriate power for territorial authorities to restrict the use of motor vehicles on unformed legal roads for the purpose of protecting the environment, protecting the road and the adjoining land from damage and protecting the safety of road users.
12. Such a bylaw-making power needs to be carefully worded so that it does not risk the indiscriminate banning of motor vehicles on unformed legal roads. Four wheel drive enthusiasts commonly use unformed legal roads for recreational purposes, and unformed legal roads can also provide important access routes to rivers, lakes and the coast.

13. When the Walking Access Bill was being considered by Parliament in 2008 there were strong submissions by four wheel drive organisations and fishing enthusiasts about the importance of unformed legal roads for motor vehicle access.

14. The scope to make such bylaws needs to balance the desirability of protecting the environment and the safety of road users against the public interest in preserving the public right of access.

Consultation

15. The paper has been prepared in consultation with the Department of Internal Affairs, the Ministry of Transport, Land Information New Zealand and the New Zealand Walking Access Commission, and they all support the recommendations. Local Government New Zealand also supports the recommendations.

Financial implications

16. There are no financial implications.

Human rights and gender perspectives

17. There are no human rights or gender issues

Disability perspective

18. Consideration will need to be given, at the detailed drafting stage, that the scope for the proposed bylaw-making power does not include limiting the use of personal mobility devices.

Legislative implications

19. The report has no direct legislative implications. The policy, if agreed, will be an input into the process of consolidating the road bylaw-making powers and enabling the repeal of the Transport Act 1962.

Regulatory impact analysis

20. A regulatory impact analysis was submitted as part of the review of the Transport Act 1962. The review included comprehensive proposals to consolidate, rationalise and remake road bylaw-making powers.
Publicity

21. Publicity is not needed.

Recommendations

24. I recommend that the Committee:

24.1 note that there is a need for interim measures to clarify the powers of territorial authorities to regulate the inappropriate use of motor vehicles on unformed legal roads;

24.2 agree that the bylaw-making powers in respect of roads to be included in a proposed Land Transport Amendment Bill specify that bylaws may restrict the use of motor vehicles on defined unformed legal roads for the purpose of protecting the environment, protecting the road and the adjoining land from damage and protecting the safety of road users.

Hon David Carter
Minister of Agriculture

27/4/2009
Consultation on Cabinet and Cabinet Committee Submissions

**Certification by Department:**

Guidance on consultation requirements for Cabinet/Cabinet committee papers is provided in the CabGuide (see Procedures: Consultation): [http://www.cabguide.cabinetoffice.govt.nz/procedures/consultation](http://www.cabguide.cabinetoffice.govt.nz/procedures/consultation)

**Departments/agencies consulted:** The attached submission has implications for the following departments/agencies whose views have been sought and are accurately reflected in the submission:

- Department of Internal Affairs
- Ministry of Transport
- Land Information New Zealand
- Local Government New Zealand
- Walking Access Commission

**Departments/agencies informed:** In addition to those listed above, the following departments/agencies have an interest in the submission and have been informed:

**Others consulted:** Other interested groups have been consulted as follows:

<table>
<thead>
<tr>
<th>Name, Title, Department:</th>
<th>Mark Neeon, Manager, Environment Policy</th>
</tr>
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<tbody>
<tr>
<td>Date:</td>
<td>23/04/09</td>
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**Certification by Minister:**

Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet committee.

**The attached proposal:**

- Consultation at Ministerial level:
  - [ ] has been consulted with the Minister of Finance
    (required for all submissions seeking new funding)
  - [X] has been consulted with the following portfolio Ministers:
    - [X] did not need consultation with other Ministers

- Discussion with National caucus:
  - [ ] has been or [ ] will be discussed with the government caucus
  - [X] does not need discussion with the government caucus

- Discussion with other parties:
  - [ ] has been discussed with the following other parties represented in Parliament:
    - [ ] Act Party
    - [ ] Maori Party
    - [ ] United Future Party
    - [ ] Other [specify]
  - [ ] will be discussed with the following other parties represented in Parliament:
    - [ ] Act Party
    - [ ] Maori Party
    - [ ] United Future Party
    - [ ] Other [specify]
  - [X] does not need discussion with other parties represented in Parliament

**Portfolio:** Agriculture

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<th>27/4/08</th>
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**Signature:**
RELEASED UNDER THE OFFICIAL INFORMATION ACT
IN CONFIDENCE

Cabinet Economic Growth and Infrastructure Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Walking Access: Unformed Legal Roads: Regulation of Motor Vehicle Access

Portfolio: Agriculture

On 6 May 2009, the Cabinet Economic Growth and Infrastructure Committee:

1 noted that there is a need for interim measures to clarify the powers of territorial authorities to regulate the inappropriate use of motor vehicles on unformed legal roads;

2 agreed that the bylaw-making powers in respect of roads to be included in a proposed Land Transport Amendment Bill specify that bylaws may restrict the use of motor vehicles on defined unformed legal roads for the purpose of:

2.1 protecting the environment;

2.2 protecting the road and the adjoining land from damage;

2.3 protecting the safety of road users;

3 invited the Minister of Transport, in consultation with the Minister of Agriculture, to issue drafting instructions to the Parliamentary Counsel Office to give effect to paragraph 2, for inclusion in a proposed future Land Transport Amendment Bill.

Janine Harvey
Committee Secretary

Reference: EGI (09) 58

Distribution: (see over)
Present:
Hon Bill English (Chair)
Hon Dr Nick Smith
Hon David Carter
Hon Tim Groser
Hon Dr Wayne Mapp
Hon Steven Joyce
Hon Kate Wilkinson
Hon Dr Pita Sharples

Officials present from:
Officials Committee for EGI

Distribution:
Cabinet Economic Growth and Infrastructure Committee
Office of the Prime Minister
Chief Executive, DPMC
  John Crawford, DPMC
PAG Subject Advisor, DPMC
Secretary to the Treasury
  Jeremy Corbin, Treasury
Chief Executive, MMB
  Lewis Holden, MMB
Minister for Treaty of Waitangi Negotiations
  Director, Office of Treaty Settlements
Director-General, MAF (Agriculture)
  Paul Steele, MAF
Secretary for Transport
Minister for Land Information
  Chief Executive, Land Information New Zealand
Minister of Local Government
Secretary for Internal Affairs (Local Government)
Chief Executive, Te Puni Kokiri
Chief Parliamentary Counsel
Legislation Coordinator
Cabinet

Minute of Decision

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Report of the Cabinet Economic Growth and Infrastructure Committee: Period Ended 8 May 2009

On 11 May 2009, Cabinet made the following decisions on the work of the Cabinet Economic Growth and Infrastructure Committee for the period ended 8 May 2009:

BGI Min (09)/2 Walking Access: Uniformed Legal Roads; Regulation of Motor Vehicle Access; Portfolio: Agriculture

CONFIRMED

Out of scope.
Out of scope.

Rebecca Kitteridge
Secretary of the Cabinet

Reference: CAB (09) 225
BRIEFING ON EGI PAPER ON THE REGULATION OF MOTOR VEHICLES ON UNIFORM LEGAL ROADS

Date: 23 April 2009
Priority: Medium
Security Level: Unclassified
Document Number: B08-607

Action sought

<table>
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<th>Minister</th>
<th>Action sought</th>
<th>Deadline</th>
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<tbody>
<tr>
<td>Minister of Agriculture</td>
<td>Sign the attached EGI paper and submit to the Cabinet Office</td>
<td>10 am on Thursday 30 April 2009</td>
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</table>

Does the paper have financial implications? No
Risks N/A Level of Risk N/A

Ministry Contacts

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>First Contact</th>
<th>Telephone (work)</th>
<th>Telephone (after hours)</th>
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<tr>
<td>Responsible Manager Mark Neeson</td>
<td>Manager Environment Policy</td>
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<tr>
<td>Principal Author Hunter Donaldson</td>
<td>Senior Advisor</td>
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BRIEFING ON THE REGULATION OF MOTOR VEHICLES ON UNFORMED LEGAL ROADS

Purpose

1. This brief recommends that you sign the attached paper for the Cabinet Economic Growth and Infrastructure Committee and submit it to the Cabinet Office by 10 am on Thursday 30 April 2009.

Key Points

1. The previous government had agreed that officials should report by 31 March 2009 on the need to clarify the scope for territorial authorities to make bylaws restricting motor vehicle use on specific roads where there was a risk of environmental damage (POL Min (08) 11/13).

2. The issue arose in the context of the walking access policy and the consideration of the value of unformed legal roads for walking access.

3. A concern to territorial authorities was that the identification of unformed legal roads for walking access may encourage inappropriate use of those roads by motor vehicles.

4. There is uncertainty about the scope for territorial authorities to make bylaws to regulate the use of motor vehicles on unformed legal roads.

5. The paper recommends that, when the powers to make bylaws in respect of roads are considered for inclusion in a Road Transport Amendment Bill, a power to regulate the use of motor vehicles where this risks environmental damage and risks to public safety be included.

6. The Ministry of Agriculture and Forestry will brief you separately on a proposal to develop guidelines for territorial authorities on the management of unformed legal roads from a walking access perspective.

Recommendation

2. We recommend that you sign the attached paper for the Cabinet Economic Growth and Infrastructure Committee and submit it to the Cabinet Office by 10 am on Thursday 30 April 2009.

Agreed / Not Agreed

Mark Neeson
Manager, Environment
Natural Resources Policy

Hon David Carter
Minister of Agriculture
Walking Access in the New Zealand Outdoors: Key Provisions for a Walking Access Bill

On 30 May 2005, following reference from the Cabinet Business Committee, Cabinet:

Background

1 noted that:

1.1 in December 2004 Cabinet agreed to a policy for walking access and to core elements of that policy [CAB Min (04) 42/9];

1.2 the paper under CBC (05) 51 proposes further detailed policy for a Walking Access Bill (the Bill);

Purpose of the Bill

2 agreed that the Bill contain a purpose statement similar to that agreed by Cabinet in December 2004, that is, to:

2.1 achieve high quality access for walking and similar passive recreation activities;
2.2 provide for walking access along footways beside identified parts of the coastline and specified watercourses and water bodies in New Zealand for public enjoyment of the outdoors;

2.3 protect existing access;

2.4 establish a statutory code of responsible conduct to ensure that persons exercising the walking right respect and protect the interests of landholders;

2.5 enable the establishment and maintenance of other walking access over land by negotiated agreement with landholders;

2.6 provide leadership on walking access policy;

[CAB Min (04) 42/9]

Application

3 agreed that the footways apply to all types of land tenure, including general, Maori and public land;

New Zealand Access Commission

4 agreed that the Bill establish the New Zealand Access Commission (the Commission) as a Statutory Entity, with the status of Crown Agent;

5 agreed that the Commission’s board comprise five members (initially) and employ a supporting executive;

6 agreed that the Commission have the following functions:

6.1 promoting walking access, including educating and building relationships with the public, local government and other stakeholders;

6.2 compiling, holding and publishing information about publicly accessible land in New Zealand;

6.3 establishing the location and extent of the footways on general, Maori and public land in accordance with statutory criteria;

6.4 determining applications for discretionary exclusions from walking access on footways on general title land;

6.5 providing information and advice to the Maori Land Court in respect of discretionary exclusions from walking access to Maori land;

6.6 consulting on and approving the code of responsible conduct;

6.7 mediating on access matters;

6.8 promoting and enforcing compliance with the requirements and constraints on walking access;
6.9 negotiating and funding negotiated walking access to land not otherwise subject to public access;

6.10 carrying out the statutory functions of establishing and maintaining walkways;

6.11 providing advice on walking access to the Minister responsible for the Commission;

6.12 monitoring, recording and reporting to the responsible Minister on the provision of walking access by other agencies;

6.13 such other functions conferred by the Bill, and any other function associated with walking access as directed by the Minister;

7 agreed that the functions in paragraph 6 be included in the Bill;

8 agreed that the Minister will not be able to direct the Commission in respect of its statutory decision-making functions;

Criteria and processes for establishing the footway

9 agreed that in determining the location of footways, the Bill require footways to be established:

9.1 as far as possible around the coast of New Zealand;

9.2 around and in the beds of identified water bodies of an area of eight hectares or more;

9.3 alongside and in the beds of identified watercourses;

10 agreed that the Commission, in identifying and determining the location and extent of the footway:

10.1 will take account of the desirability of:

10.1.1 re-establishing walking access where, as a result of changes in the location of water margins, existing reservations no longer provide public access alongside or to the dry margins of those watercourses, water bodies or the coast;

10.1.2 establishing continuity of walking access between existing reservations, and reservations re-established in terms of the preceding criterion;

10.1.3 establishing continuous walking access along identified watercourses and water bodies or the coast where no (or little) public access is currently provided;

10.2 may consider, where relevant, the desirability of including watercourses and water bodies:

10.2.1 where the size and physical characteristics of any water course including its width, extent, flow and catchment area and any special
features considered by the Commission make it appropriate for walking access;

10.2.2 with amenity value (as defined in the Resource Management Act 1991);

10.2.3 which would facilitate access to other areas available for public and recreational use;

10.2.4 which for historical or cultural reasons are of public interest;

10.2.5 which have ecological characteristics (such as aquatic life and vegetation) of public interest;

10.2.6 which have been identified for the issue of freshwater fishing licenses;

10.2.7 which are subject to Water Conservation Orders for recreational purposes or where recreational value was an important consideration in granting a Water Conservation Order;

10.2.8 which have been identified as having natural heritage or access value in Regional or District Plans;

10.2.9 which for any other reason the Commission considers relevant to the establishment of walking access;

11 agreed that the legislation provide that in preparing the provisional map the Commission may, but shall not be obliged to, apply any one or more of the criteria set out in paragraph 10.2;

12 agreed that the legislation provide that in making any determination on a final map the Commission shall, as appropriate, apply any one or more of the criteria set out in paragraph 10.2;

13 agreed that the Commission be required to keep a record of its reasons for decisions;

14 agreed that to establish the footway, the Bill include provision for:

14.1 development and publication of a provisional map of footways;

14.2 public notification of the provisional map of footways;

14.3 consideration of submissions on the notified provisional map and revision of the provisional map into a final map of footways;

14.4 publication of the final map of the footways and other public access known to the Commission, with walking access along footways commencing two years after the date of publication, or such later date as may be determined by Order in Council;

14.5 the Commission or persons authorised by the Commission to enter onto private land for the purposes of determining the map, subject to prior notification and any other conditions necessary to minimise the impact on landholders;
Review of the extent of the footway

15 agreed that the Bill require a review of the extent of the footway every 10 years, or earlier if the Commission considers it desirable to do so, with the review process to follow the process for establishing footways;

Location of footway along the coast

16 agreed that where the footway (as defined in paragraphs 14-17 of CAB Min (04) 42/9) exists around the coast, it not extend over foreshore that is subject to a specified freehold interest (i.e. privately owned foreshore);

Compensation

17 agreed that the Bill provide that no compensation be available except in the cases where a landholder can demonstrate beyond doubt that this policy has resulted in a decrease in the value of their property;

Commercial use of footway

18 agreed that the Bill prohibit commercial use of the footway except with the landholder’s consent;

Criteria and processes for exclusions (restrictions) from access on the footway

19 noted that:

19.1 Cabinet has agreed to three types of exclusions (standard, discretionary and temporary), and that the discretionary exclusions require criteria and a process;

19.2 Cabinet has agreed that the standard exclusions will be prisons, schools during school hours, reservoirs, airports, port facilities, specified public utilities where title to the land extends onto the footway, sites of specific historic significance which would be incompatible with access, wahi tapu, and other sites of spiritual or cultural significance incompatible with access. Other classes of land may be added by Order in Council. In cases of doubt there is a presumption in favour of the application of a standard exclusion;

[CAB Min (04) 42/9]

20 agreed that the proposed criteria (for inclusion in the Bill) for determining applications for discretionary exclusions are that some or all of the following outweigh the public benefits of walking access:

20.1 incompatible land use, where it could be demonstrated that walking access would render the footway incapable of reasonable use by the landholder and place an unfair and unreasonable burden on any person having an interest in the land;

20.2 conservation reasons, being the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, which are incompatible with walking access;
20.3 *public health and safety reasons*, being issues beyond mere difficulty of navigability on foot;

20.4 *proximity to structures* that preclude walking access and are not already covered by standard exclusions;

20.5 *cultural and historical reasons*, being the preservation and protection of cultural and historical values which are incompatible with walking access;

20.6 *other reasons* for exclusion considered to be relevant by the Commission or the Maori Land Court;

21 agreed that the process for consideration of discretionary exclusions:

21.1 require applications to be made by landholders to the Commission or, for Maori land, to the Maori Land Court and for the purposes of the Maori Land Court to be as similar as possible to those of the Commission, taking into account existing Maori Land Court procedures;

21.2 provide for applications to be in the appropriate form and contain sufficient information;

21.3 allow for interim closure of the particular section of the footway to be granted while the application is being considered, subject to a presumption in favour of access;

21.4 require the Commission and the Maori Land Court to notify persons or organisations considered representative of interests likely to be substantially affected by the granting of the application, or such other public notification as they consider necessary (except where the exclusion sought is considered minor as it will have minimum impact on walking access) and for persons or organisations to make submissions to the Commission or the Maori Land Court;

21.5 require consideration of the application against the criteria for discretionary exclusions, taking into account submissions;

21.6 provide for discretionary exclusions to be subject to conditions including:

21.6.1 the period of time for which the footway is to be closed; and/or

21.6.2 a period of time that is tied to a specific purpose for which closure is allowed; and/or

21.6.3 special conditions such as the provision of alternative walking access;

21.7 require the applicant landholder and submitters to be notified of the decision including reasons;

22 agreed that only landholders may apply for discretionary exclusions;

23 agreed that temporary exclusions are:
23.1 for the purpose of lambing, tree felling, weed spraying, and rahui, or such other purpose incompatible with access which has been approved by the Commission and notified in the Gazette;

23.2 subject to timely notification to the Commission of the exclusion and the reason for it, and signposting of the exclusion;

23.3 subject to a time limit of 90 days in any year for any part, or all, of the footway on a particular property;

23.4 subject to no time limit in respect of temporary exclusions for the purposes of rahui;

Role of Maori Land Court

24 agreed that the appropriate role for the Maori Land Court is to determine applications for discretionary exclusions over Maori land;

25 agreed that in exercising its jurisdiction the Maori Land Court be guided by the purposes, principles and criteria of the Access Bill;

Rights of appeal

26 agreed that appeals from:

26.1 the Commission’s decisions or determinations will be to the High Court;

26.2 the Maori Land Court’s determinations will be to the Maori Appellate Court;

26.3 determinations of either the High Court or the Maori Appellate Court will be to the Court of Appeal;

27 agreed that:

27.1 rights of appeal from decisions of the Access Commission be confined to points of law;

27.2 appeals from the decisions of the Maori Land Court will be governed by the current provisions of Te Ture Whenua Maori Act 1993, and will cover matters of fact and law;

27.3 decisions subject to appeal will remain in effect while the appeal is being resolved;

28 agreed that standing to appeal against any determination of the Commission in respect of any final access map or any application for discretionary exclusion will be given to persons who:

28.1 are landholders of land on which a footway exists or is proposed to exist; or

28.2 have made submissions on the map or the application for exclusion and who may establish an interest in having access to any watercourse, water body, or any part of the coast;
agreed that notice of appeal must be given within two months of publication of the final map or within two months of the notification of the determination on an application for a discretionary exclusion;

agreed that standing to appeal any determination by the Maori Land Court, and the time within which to make an appeal, shall be in accordance with existing provisions of Te Ture Whenua Maori Land Act 1993. Notice of appeal must be given within two months. Standing is given to any party to the proceedings and any other person bound by the determination or materially affected by it;

agreed that no rights of appeal shall arise until:

31.1 the final map is first published as a final map; or

31.2 the Commission or Maori Land Court notifies an applicant of its decision on an application for a discretionary exclusion;

agreed that the Commission be funded and be responsible for the supply of signs identifying exclusions;

New Zealand Walkways

noted that Cabinet has agreed to amend the enforcement powers contained in the New Zealand Walkways Act as part of generic policy approval for the Minister of Conservation [POL Min (03) 7/17 and 7/18, and CAB Min (04) 39/1c];

rescinded the policy approval referred to in paragraph 33 inasmuch as it applies to the New Zealand Walkways Act 1990; and instead

agreed that the New Zealand Walkways Act be incorporated into the Bill;

Negotiated Walking Access

agreed that the Commission be funded to enable the negotiation of walking access over private land;

noted that a new initiative bid will be made for 2006/07 to establish the fund;

Code of Responsible Conduct

agreed that the Code of Responsible Conduct contain guidance material, expected behaviours and minimum standards, and that a consultation and development process for the Code be contained in the Bill (Appendix 2 of the paper under CBC (05) 51);

agreed that the minimum standards will have legal effect in that:

39.1 evidence of a failure to meet a minimum standard may be used to support a prosecution for an offence against the Bill;

39.2 it is a defence for a person who is charged with an offence against the Bill to show they equalled or exceeded the minimum standards;

agreed that the Code be a deemed regulation for the purposes of the Regulations (Disallowance) Act 1989 as it contains minimum standards;
Offences and Penalties

41 agreed to the offences, omus of proof and penalties for those offences, at the levels indicated in Appendix 3 of the paper under CBC (05) 51;

42 agreed to two defences for the strict liability offences, these being that:

42.1 the defendant took all reasonable steps to ensure that the offence was not committed; or

42.2 the action or omission was taken in a situation of emergency and was consistent with the safety and welfare of a person;

43 agreed that the Bill provide for compliance orders as a timely means of ensuring compliance with the proposed prohibitions of the Bill;

44 agreed that walking in compliance with the Bill does not constitute trespass under the Trespass Act 1980, the Crimes Act 1961, the Land Act 1948 or other legislation where appropriate;

45 agreed that the footway not be subject to section 22 of the Summary Offences Act 1981;

Officers and Powers

46 agreed that the Bill:

46.1 provide for the Commission to appoint officers and honorary officers to monitor compliance with the Bill;

46.2 deem Police officers to be officers under the Bill;

46.3 deem warranted Department of Conservation Officers under the Conservation Act 1987 to be officers under the Bill;

46.4 provide that the Commission be responsible for enforcing the Bill;

47 agreed that officers and honorary officers have powers including:

47.1 to intervene to prevent offences;

47.2 to require particulars from those persons committing offences;

47.3 appropriate powers to obtain information;

48 agreed that officers (but not honorary officers) have powers to obtain search warrants to enter dwellinghouses, vehicles and marae to search and to seize documents and objects that may provide evidence of the commission of an offence under the Bill;

49 agreed that the Bill protect officers from civil or criminal liability for exercising their powers in good faith and with reasonable cause;
Regulations

50 agreed that the Bill provide for regulations to be made for purposes under the Bill, including to:

50.1 extend the time for publishing the provisional map;
50.2 set standards;
50.3 set fees to allow the Commission to recover some of its costs in accordance with principles to be included in the Bill;
50.4 give full effect to the Bill or its due administration;

51 agreed that the Bill include appropriate cost recovery principles similar to those in section 182 of the Animal Welfare Act 1999;

Public roads (unformed legal roads)

52 agreed that:

52.1 officials from the Ministry of Agriculture and Forestry (lead), Department of Internal Affairs, Ministry of Transport, Department of Conservation and other agencies as appropriate, report by 31 May 2005 to the Associate Minister for Rural Affairs and the Ministers of Transport, Local Government and Conservation, on:

52.1.1 the detail of the mechanism to enhance public walking access along unformed legal roads;
52.1.2 criteria to be taken into account when identifying unformed roads of value for public walking access;
52.1.3 the means of controlling inappropriate vehicular access to roads identified for public walking access, but unsuitable for vehicle access (for example by extending territorial authorities’ vehicular traffic road closure powers), including penalties for breaches similar to those proposed for vehicular use of footways;

52.2 the Associate Minister for Rural Affairs, and the Ministers of Transport, Local Government and Conservation be authorised to agree to the content of drafting instructions for the mechanism referred to in paragraph 52.1.1 for inclusion in the Bill;

Landholder liability

53 agreed that the Bill include a provision to protect landholders from the common law liabilities referred to in the Occupiers Liability Act 1962, other than deliberate acts or omissions, that this protection cover land where there are footways under this Bill and walkways under the New Zealand Walkways Act, and that it extend to exemplary and compensatory damages;
Resource Management Act

54 **agreed** that the Bill preclude regional councils or territorial authorities, when implementing the Resource Management Act 1991, from taking into consideration the existence of a footway and that the existence of a walkway will not be a matter to be taken into account by local authorities in assessing or making decisions on a resource consent;

Land Transfer Act

55 **agreed** that, if necessary for the avoidance of doubt, the Bill provide that walking access will apply notwithstanding anything in the Land Transfer Act 1952;

Exclusive Capture

56 **noted** that the proposed access right will ease some concerns about ‘exclusive capture’, but there are remaining issues which need to be addressed outside the context of the walking access right;

57 **directed** the Department of Conservation in consultation with the Ministry of Agriculture and Forestry, the Ministry of Tourism and the New Zealand Fish and Game Council to report to the Cabinet Policy Committee by 31 July 2005 on policy options to address the sale of access rights;

Next Steps

58 **noted** that Cabinet has agreed that a Walking Access Bill have a category 4 priority on the 2005 Legislation Programme, proceed to Select Committee in 2005;

59 **invited** the Associate Minister for Rural Affairs to issue drafting instructions for a Walking Access Bill to give effect to the above decisions and those in CAB Min (04) 429;

60 **authorised** the Associate Minister for Rural Affairs to have the power to approve minor changes to the proposed provisions in the Bill to give effect to the policies approved by Cabinet;

61 **noted** that the Associate Minister for Rural Affairs intends to provide a paper for Cabinet on 7 June 2005 on any remaining issues;

62 **noted** that the Associate Minister for Rural Affairs indicates that consultation is not required with government caucuses or other parliamentary parties.


Secretary of the Cabinet Reference: CAB (05) 225; CBC Min (05) 5/14

"Secretary’s Note: Cabinet amended paragraph 25, rescinded an earlier Cabinet decision (paragraph 34) and added paragraph 61. This minute accordingly replaces CBC Min (05) 5/14."
RELEASED UNDER THE OFFICIAL INFORMATION ACT
Office of the Associate Minister of Rural Affairs

Memorandum to the Cabinet Business Committee

WALKING ACCESS BILL: UNFORMED LEGAL ROADS

Proposal

1. I propose that the Cabinet Business Committee invites Cabinet to rescind its decision that the Walking Access Bill (the Bill) contain a provision facilitating the removal of obstructions to walking access on unformed legal roads which are identified as being of value for walking access.

Background

On 30 May 2005 Cabinet agreed to the key provisions of a Bill (CAB Min (05) 19/1B refers). Cabinet directed officials from the Ministry of Agriculture and Forestry (lead), Department of Internal Affairs, Ministry of Transport, Department of Conservation and other agencies as appropriate, to report by 31 May 2005, to the Associate Minister for Rural Affairs and the Ministers of Transport, Local Government and Conservation, on:

- the detail of the mechanism to enhance public walking access along unformed legal roads;
- criteria to be taken into account when identifying unformed roads of value for public walking access; and
- the means of controlling inappropriate vehicular access to roads identified for public walking access, but unsuitable for vehicle access (for example by extending territorial authorities’ vehicular traffic road closure powers), including penalties for breaches similar to those proposed for vehicular use of footways.

Cabinet authorised the Associate Minister for Rural Affairs, and the Ministers of Transport, Local Government and Conservation to agree to the content of drafting instructions for the mechanism for inclusion in the Bill.

2. The recommendation I made to Cabinet on the use of unformed legal roads for walking access (of which the above Cabinet decision was based) was to provide for a new power to close unformed legal roads to vehicle access in exchange for a measure to enforce an existing legal right in respect of walking access.

3. The action of some person or group seeking to remove an obstruction to walking access risks the closure of vehicle access to the unformed road. Such a closure could well be justified on public interest grounds, such as public safety or environmental concerns. Consideration, however, of
such a closure needs to be done in a way which is transparent and can be seen by the potentially competing interest groups as being fair and objective. A measure aimed at improving practical walking access has also to consider the interests of walkers, vehicles users and the adjoining landowner.

4. The Ministry of Agriculture and Forestry (MAF) advises me that the above and other options raise complex policy and legal matters which cannot be readily resolved in the time available to be incorporated in the Bill. The options have potentially far-reaching political implications and should be dealt with in a more considered timeframe. For example, a measure which enhances the use of these roads for walkers might restrict their use by vehicle users. It would be undesirable to set the interests of walkers against those of vehicle users in this way.

5. Officials consider, and I concur, that it is preferable for the topic to be addressed in more depth in the review being considered by the Minister of Local Government of the legislation relating to the management of unformed roads. The review arises from a Parliamentary petition seeking legislative changes to ensure public access to unformed legal roads. This review is intended to deal with the use of unformed roads by vehicles, the recreational use of unformed roads, and the requirements and processes for stopping unformed roads. The Minister has already established a process for developing a terms of reference for the review.

6. I propose, therefore, that Cabinet Business Committee invites Cabinet to rescind its decision that the Walking Access Bill (the Bill) contain a provision facilitating the removal of obstructions to walking access on unformed legal roads which are identified as being of value for walking access.

Consultation
The Departments of Conservation and Internal Affairs and the Ministry of Transport and Land Information New Zealand were members of the officials’ group and were consulted on this paper.

Financial and legislative implications
This paper has no financial or legislative implications

Recommendation
7. I recommend that the Cabinet Business Committee invite Cabinet to rescind its decision made at its meeting on 30 May 2005 that the Walking Access Bill include a remedy for the unlawful obstruction to walking access of unformed legal roads, and a power for territorial authorities to regulate vehicle access on such roads (CAB Min (05) 19/1B, recommendation 52).

Hon Jim Sutton
Associate Minister for Rural Affairs

This paper seeks agreement to a government response to the recommendations of the Walking Access Consultation Panel.

In February 2007, the Cabinet Policy Committee (POL) directed officials to report back by 1 August 2007 on the report of the Walking Access Consultation Panel with recommendations on policy implications and implementation matters [POL Min (07) 3/11].

The recommendations of the Walking Access Consultation Panel reflect a consensus on walking access. The paper proposes to implement the Panel’s key recommendations.

Access by negotiation: It is proposed that new access over private land (including Maori land) should be by negotiation and agreement with the landholder, unless an access right is established by existing statutory mechanisms (paragraphs 11-13).

A new access organisation: Agreement in principle is sought, subject to a further report to POL in December 2007, to establish a new Crown entity to manage walking access. As a transitional arrangement, agreement is sought to form an establishment unit for the new organisation within the Ministry of Agriculture and Forestry and to appoint an advisory board (paragraphs 14-34).

Mapping of existing public access: It is proposed that the establishment unit commence work as soon as possible on mapping existing public access, and that the maps and other information be publicly available (paragraphs 35-42).

Issues relating to unformed legal roads: The Panel recommended that territorial authorities should be required to retain unformed legal roads for possible future use by the public. The Department of Internal Affairs is currently evaluating whether any legislative changes are needed to provide for the future ownership, management and use of unformed legal roads. Pending the outcome of that work, it is proposed that officials (and the advisory board) consider these general issues and report, with recommendations, to POL by 30 June 2008 (paragraphs 43-50).
Trigger mechanisms for the creation of new access: The paper discusses the mechanisms available for creating legal access over Crown-owned land and private land. One Panel member considered there should be additional trigger mechanisms for achieving new public access, but the current mechanisms are considered to be adequate. The Minister of Finance will report to POL in 2012 on the effectiveness of the Overseas Investment Act 2005 in protecting and providing for recreational access (paragraphs 51-65).

Contestable fund: The establishment of a contestable fund is proposed to enhance public access over private land.

Baseline Implications
No new funding is required for walking access. It is possible that making available more information about the location of unformed legal roads may place financial pressure on local authorities.

A New Initiatives Bid for Budget 2008 will be submitted for the contestable fund (an indicative amount is $2-3 million per year) and for the Crown entity.

Legislative Implications
None from this paper. Legislation will be required to establish a new Crown entity.

Timing Issues
An indicative timetable for implementing the proposals is set out in paragraph 87.

Announcement
Agreement is sought to release the paper. The Minister will issue an appropriate media statement.

Consultation
Paper prepared by MAF, MfE, TPK, MED, DOC, DIA, Transport, Justice, Tourism, LINZ, Labour, Treasury, SSC and DPMC were consulted. Local Government New Zealand was also consulted, and SPARC was informed.

The Minister for Rural Affairs indicates that the Minister of Finance has been consulted, and that discussion will be required with the government caucuses and with other parties represented in Parliament.

The Minister for Rural Affairs recommends that the Committee:

Background

1 note that in February 2007, the Cabinet Policy Committee (POL):

1.1 noted that the Walking Access Consultation Panel has submitted its report to the Minister for Rural Affairs;

1.2 noted that all key stakeholder groups support the establishment of an independent access organisation with powers and functions to coordinate, lead and promote the use of existing public access and the negotiation of new access;
noted that one Panel member has recorded an alternative view about statutory powers to establish new walking access along water margins, and to "public natural resources" such as sport fish where there is so-called "exclusive capture";

noted that the majority of the Panel does not support the alternative measures referred to in paragraph 1.3;

directed the Ministry of Agriculture and Forestry (MAF), in consultation with the Treasury, State Services Commission, Department of Conservation (DOC), Land Information New Zealand (LINZ), Department of Internal Affairs, Ministry of Justice and other interested departments, to report to POL by 1 August 2007 with recommendations on policy implications and implementation matters;

Access by negotiation

agree that new walking access over private land, including Maori land, be achieved by negotiation and agreement with the landholder (other than access established by existing statutory processes);

agree that priorities for the negotiation of access over private land include:

areas along the coast where public access on both the foreshore and the dry margin is unavailable;

restoring and realigning access along water margins where agreement can be reached between landholders, the Crown and/or local authorities;

creating new access along water margins where none currently exists;

access to the coast where no practical public access is available;

agree that matters for negotiation of access over private land can include the carrying of firearms and access with dogs, bicycles and motor vehicles;

A new access organisation

agree in principle, subject to the report referred to in paragraph 8, to establish a Crown entity responsible for advice and to implement walking access policies;

agree that an establishment unit be created within MAF and be responsible to the Director-General of MAF;

note that the Panel recommended that the access organisation be called ‘Te Ara o Papatuānuku’ (the New Zealand Access Commission);

invite the Minister for Rural Affairs, in consultation with the Minister of State Services, to report to POL by 5 December 2007 with advice on whether to confirm the decision in principle to establish a new Crown entity, including its merits relative to any alternative organisational structure and, if confirmed, to seek authority to issue drafting instructions for the necessary legislation;

agree in principle, subject to the report referred to in paragraph 8, that the functions of the Crown entity will be:
9.1 the provision of national leadership, including a national strategy, and
coordination of access among key stakeholders and relevant central and local
government organisations;

9.2 the provision of impartial and robust advice on access;

9.3 local/regional leadership and coordination to help local groups with their access
issues;

9.4 mediation of disputes over walking access issues, including the ability to initiate
negotiations;

9.5 the reference of disputes about legal access to an appropriate authority;

9.6 the creation and administration of walkways made under the New Zealand
Walkways Act 1990, with planning and supervision focused at a local level;

9.7 the establishment and maintenance of a public access mapping database;

9.8 administration of a contestable fund for the purpose of negotiating walking access
either under the provisions of the New Zealand Walkways Act 1990 or new or
other existing legislation;

9.9 the receipt and management of private funding contributions (including
sponsorships) for the promotion of walking access;

9.10 research, education and participation in external access-related topics and
programmes;

9.11 the development, promotion and maintenance of a code of responsible conduct;

agree in principle, subject to the report referred to in paragraph 8, that the Crown entity
be empowered to:

10.1 consider all forms of access, in consultation with relevant organisations, (there are
efficiencies in an access organisation dealing with all forms of access), but with
walking access as its priority area of concern;

10.2 acquire access over private land and fund the acquisition of such rights;

11 direct officials, when considering the functions of the Crown entity, to take into account
the Panel’s additional recommendations on its functions;

12 agree in principle, subject to the report referred to in paragraph 8, that the administration
of the New Zealand Walkways Act 1990 be transferred to the department that supports
the Minister responsible for the Crown entity (MAF);

13 note that transitional arrangements would need to be agreed between MAF and DOC in
respect of funding of walkway maintenance and any legal agreements for access to
private land for walkways;
agree in principle, subject to the report referred to in paragraph 8, that operational responsibility for the New Zealand Walkways Act 1990 be transferred to the Crown entity;

note that the operational management of walkways on land administered by DOC will be subject to a Memorandum of Understanding between the Crown entity and DOC;

Establishment unit

direct MAF (the establishment unit), in consultation with the advisory board referred to in paragraph 17 below, once established, to:

16.1 begin negotiations on a Memorandum of Understanding with DOC on operational management of walkways on land administered by DOC;

16.2 develop a New Zealand Access Strategy, including new access and priorities for funding;

16.3 coordinate the development of a voluntary code of responsible conduct;

An advisory board

17 agree to appoint an advisory board to the establishment unit;

18 invite the Minister for Rural Affairs to submit nominations and terms of appointment for the advisory board to the Cabinet Appointments and Honours Committee by 20 September 2007;

19 note that the Minister for Rural Affairs intends the advisory board to become the establishment board for the new entity should the decision in principle to establish a Crown entity be confirmed;

Mapping of existing public access

20 agree that the establishment unit undertake a stock take of existing mapping information and a preliminary analysis of the public’s likely requirements and priorities before any information is published;

21 agree not to pursue the Panel’s recommendation that LINZ examine ways of depicting private roads on topographical maps in a way that makes them more readily distinguishable from public roads;

Issues relating to unformed legal roads

22 direct MAF, LINZ, the Department of Internal Affairs, DOC and the Ministry of Transport, in consultation with Local Government New Zealand, to report to POL by 30 June 2008 on:

22.1 the proposal that territorial authorities should generally be required to retain unformed legal roads for possible future use by the public;
22.2 the proposal that territorial authorities should be provided with more powers to manage the use of unformed legal roads, provided that this is associated with a duty to keep unformed legal roads clear of obstructions to appropriate uses;

22.3 the proposal that consideration be given to stopping or resuming Crown ownership of some unformed legal roads to facilitate an exchange for alternative access;

23 note that any recommendations made in the June 2008 report referred to in paragraph 22 may only provide interim solutions pending the outcome of the Department of Internal Affairs' review of unformed legal roads, which will consider what legislative changes, if any, are desirable for the future ownership, management and use of unformed legal roads;

24 agree that the establishment unit:

24.1 work with territorial authorities and central government agencies to develop consistent and appropriate policies for managing unformed legal roads for access;

24.2 consider developing national guidelines on the administration of unformed legal roads for access;

Adequacy of trigger mechanisms for the creation of new access

25 note that existing legal mechanisms for creating access are adequate;

26 agree that there is insufficient consensus amongst stakeholders and the public to support the alternative recommendations of one Panel member that there be additional trigger mechanisms for achieving new public access;

27 invite the Minister of Conservation to consider the Panel's recommendations on "exclusive capture" taking into account the Panel's view that there should be no mandatory requirement for landholders to provide access over their land;

28 invite the Minister of Finance to report to POL in 2012 on the effectiveness of the Overseas Investment Act 2005 in protecting and providing for recreational access;

29 agree that the Crown entity not be given the status of a heritage protection authority under the Resource Management Act 1991;

30 agree that the four hectare for the provision of esplanade reserves on subdivision not be changed;

Liability, trespass and security

31 direct the Department of Labour, in consultation with the establishment unit, to:

31.1 review its current advice to further clarify landholder liability;

31.2 explain the Department's relevant compliance policies to the public;

31.3 produce guidance on section 16(2) of the Health and Safety in Employment Act 1992 to clarify farmers' duties when facilitating access to their land;
32 direct MAF, in consultation with the advisory board and the Ministry of Justice, to report to POL by 30 June 2008 on the implications and recommended policy options of the proposal to amend the Trespass Act 1980 to reduce the uncertainty of the right of the public to use existing public access alongside water margins and unformed legal roads that do not adjoin water margins;

33 direct MAF, in consultation with the Ministry of Justice, to report to POL by 30 June 2008 on implications and options for an exemption to the Occupiers’ Liability Act 1962, similar to the New Zealand Walkways Act 1990 in respect of persons on rural land for recreation or leisure;

34 invite the Minister of Police to consider the Panel’s recommendations on security in rural areas;

A contestable fund

35 note the intention to seek funding to establish a contestable fund to enhance public access over private land and for other matters relevant to access, to which local authorities and other organisations might apply;

Funding

36 note that $1.894 million is already provided for in Vote Agriculture for walking access, in anticipation of establishing an access agency in 2005/06 and that this funding will be used to implement the above proposals, including the operating costs of the advisory board and the establishment unit;

37 note that the Minister for Rural Affairs will submit a New Initiatives Bid for 2008/09 on the costs of the proposed Crown entity and contestable fund;

Publicity

38 invite the Minister for Rural Affairs to issue an appropriate media statement;

39 note that the Minister for Rural Affairs intends to release the paper under POL (07) 249.

Janine Harvey
for Secretary of the Cabinet

Copies to: (see over)
Copies to:
Cabinet Policy Committee
Chief Executive, DPMC
Director PAG, DPMC
PAG Subject Advisor, DPMC
Secretary to the Treasury
Director-General, Ministry of Agriculture and Forestry (Agriculture)
State Services Commissioner
Secretary for Transport
Chief Executive, Ministry of Economic Development
Chief Executive, Sport and Recreation New Zealand
Chief Executive, Te Puni Kokiri
Secretary for Justice
Secretary for Internal Affairs (Local Government)
Minister of Labour
Secretary of Labour
Minister of Conservation
Director-General of Conservation
Minister for Rural Affairs
General Manager, Ministry of Tourism
Director-General, Ministry of Agriculture and Forestry (Rural Affairs)
Minister for Land Information
Chief Executive, Land Information New Zealand
Secretary for the Environment
Chair
Cabinet Policy Committee


Proposal
1. Cabinet Policy Committee is invited to agree to a Government response to the recommendations of the Walking Access Consultation Panel (the Panel).

Executive summary
2. The Walking Access Consultation Panel’s recommendations reflect a consensus on walking access. This paper argues for the immediate implementation of some key recommendations, and the further consideration of others; for example, the management of public access to unformed legal roads.

3. An ‘in principle’ decision is sought to form an access organisation (as a Crown entity). Agreement is sought to form an establishment unit for the new organisation within the Ministry of Agriculture and Forestry (MAF) and to appoint an advisory board to the unit.

4. It is proposed that the Government confirm that new access over private land (including Māori land) be negotiated and agreed with affected landholders.

5. The Panel recommended that existing access be mapped and the maps and other information be publicly available. It is proposed that the establishment unit initiate this work as soon as possible.

6. The promotion of better information about walking access is an opportunity for the Government to take the lead and ensure that the public has the opportunity to use a valuable public resource – the extensive water margin reserves and unformed legal roads.

7. It is proposed that the Panel member’s alternative recommendations for additional trigger mechanisms for achieving new public access not be adopted, as these is insufficient consensus on them.

Background
8. In July 2005, Cabinet agreed to establish a Walking Access Consultation Panel (the Panel) to seek consensus about walking access in the outdoors. The Panel reported its findings to the Minister for Rural Affairs in February 2007 following extensive consultation with stakeholders and the public in 2006.

9. The Cabinet Policy Committee, on 28 February 2007 [POL Min (07) 3/11], directed MAF, in consultation with the Treasury, State Services Commission, Department of Conservation, Land Information New Zealand, Department of Internal Affairs, Ministry of Justice and other interested departments, to report back to Cabinet Policy Committee by 1 August 2007 with recommendations on policy implications and implementation matters including:
• the establishment of an access organisation and the appointment of an interim establishment board;
• the mapping of existing public access;
• issues relating to unformed legal roads; and
• the adequacy of trigger mechanisms for the creation of new access.

10. This paper covers the above four matters and other matters necessary for an appropriate Government response to, and decisions on, the report.

Substantive policy proposals

Access by negotiation

11. The majority of the Panel was clear that new access over private land should only be by negotiation and agreement with a landholder, unless it is established by existing statutory mechanisms. I support this recommendation as it removes any suggestion of compulsory taking of an interest in land. This was the core landowner concern with the footway proposal in 2004-05. A similar argument could apply to access over Crown pastoral lease land. One Panel member had an alternative view which I do not support. I propose that Cabinet confirm that new access should be achieved by negotiation. I note that any agency may negotiate new access.

12. The Panel concluded, and I agree, that priorities for negotiated walking access should include:
• areas where there is no public access either along the dry margin of the foreshore or to the foreshore (i.e. where there is private foreshore);
• the restoration of access along rivers and streams where public access has been displaced by erosion; and
• the provision of continuity of access along rivers and streams and around lakes in places where there is no access (eroded or otherwise).

13. The Panel recommended, and I agree, that public access over Māori land should be by negotiation and agreement. Improved access to wāhi tapu and other tāonga located on non-Māori land should also be by negotiation with the landholder. This means that Māori land and general title land will be treated similarly.

An access organisation

14. The Panel reported that all stakeholder groups agreed that an access organisation is necessary. The Panel, after extensive consultation and analysis of options, concluded that the need for leadership on access issues would not be achieved through any existing organisations or structures. I consider that a new stand-alone organisation will be the key to a successful policy and recommend accordingly.

15. Some functions of existing agencies (including local authorities) are relevant to walking access. For example, with respect to roads (including unformed legal roads): the Department of Internal Affairs (DIA) administers the legislation governing their ownership and control; and ownership is vested in territorial authorities which are responsible for their management. The Ministry of Transport (MOT) administers legislation applicable to all road users, including walkers, cyclists and motorists.

16. None of these responsibilities or functions would transfer to the proposed access organisation.
17. The organisation will be responsible for functions and co-ordination that are not at present the responsibility of any agency, except for the New Zealand Walkways Act 1990 (the Walkways Act), which is currently administered by the Department of Conservation (DOC) (see paragraph 26). Where practicable, I would expect those agencies with functions and responsibilities applicable to access to consult the organisation on relevant areas of policy.

Functions of proposed access organisation

18. The Panel recommended that the access organisation be empowered to carry out the following functions:

- national leadership, including a national strategy, and co-ordination of access among key stakeholders and relevant central and local government organisations;
- impartial and robust advice on access;
- local/regional leadership and co-ordination to help local groups with their access issues;
- mediation of disputes over walking access issues, including the ability to initiate negotiations;
- the reference of disputes about legal access to an appropriate authority;
- the creation and administration of walkways made under the Walkways Act 1990, with planning and supervision focused at a local level;
- the establishment and maintenance of a public access mapping database;
- administration of a contestable fund for the purpose of negotiating walking access either under the provisions of the Walkways Act 1990 or new or other existing legislation;
- the receipt and management of private funding contributions (including sponsorships) for the promotion of walking access;
- research, education and participation in external access-related topics and programmes; and
- the development, promotion and maintenance of a code of responsible conduct.

Organisational design options

19. The Panel recommended that an access organisation be established that combines the characteristics of a statutory organisation with those of a trust, and have the power to hold land or interests in land. The Panel further recommended that the organisation be accountable to a Minister and be required to report to Parliament in accordance with the Crown Entities Act 2004.

20. Officials examined four organisational options that might best undertake the functions recommended by the Panel:

- Option A – Increased co-ordination between relevant departments.
- Option B – Branded unit within a department.
- Option D – Crown Agent.
21. These options were assessed against criteria of visibility, credibility, accountability and timeliness.

22. My preference is for a Crown Agent (Option D). This would mean a new Crown entity undertaking the functions proposed by the Panel. A Crown entity is the established model that best fits the criteria. It meets most of the concerns of the stakeholder groups interested in improving walking access.

23. I propose that the Committee agree in principle to establish a new Crown entity to manage walking access. The State Services Commission (SSC) believes that more detail is needed about the precise form and functions of the access organisation. An 'in principle' decision allows further time for officials to consult with a proposed advisory board on the functions and powers of the Crown entity and on the merits of any alternative organisational form.

24. I recommend that the Crown entity be responsible to the Minister for Rural Affairs and funded through Vote: Agriculture and Forestry. Stakeholders do not support other departments being responsible for walking access.

25. I propose that the Minister for Rural Affairs report to this Committee by 5 December 2007, with advice on whether to confirm the decision to establish a new Crown entity, (or whether some alternative organisational form would be more appropriate), and, if confirmed, report on the appropriate functions, powers and structure of the Crown entity and legislative implications.

Administration of the Walkways Act 1990

26. The New Zealand Walkways Act 1990 (the Walkways Act) is administered in DOC. The Panel recommended that the Walkways Act be transferred because of the affinity between the administration of walkways and the functions of the proposed access organisation. I agree and recommend that operational responsibility for the Walkways Act be transferred to the Crown entity when it is established. It is proposed that DOC continue the operational management of walkways on land administered by DOC, subject to a Memorandum of Understanding between DOC and the Crown entity.

27. The Walkways Act itself would be administered by the department that supports the responsible Minister. MAF would thus be responsible for monitoring the performance of the Crown entity and for providing any high level policy advice that might be required in respect of the Walkways Act. Transitional arrangements would need to be made with DOC in respect of funding of walkway maintenance and any legal agreements for access to private land.

Transitional arrangements

28. Legislation is required to establish a new Crown entity and to define its functions and powers. Legislation is also necessary to give effect to the Panel's recommendation that the Crown entity become responsible for the Walkways Act.

29. It is desirable that an advisory board is appointed and an establishment unit created pending the enactment of the necessary legislation. This is a well established process for setting up a new Crown entity.

30. I recommend that the Committee agree that MAF form an establishment unit and invite the Minister for Rural Affairs to appoint an advisory board, serviced by MAF. MAF currently provides policy advice on walking access and serviced both the Land Access Ministerial Reference Group and the Panel.
31. The establishment unit, in consultation with the advisory board, MAF and SSC, would provide advice to the Minister for Rural Affairs on the appropriate functions, powers and structure for the Crown entity and whether to confirm the decision in principle to establish a Crown entity.

32. The advisory board would include Māori and key stakeholders. The establishment unit would also be expected to liaise closely with government departments with an interest in access issues to help ensure a smooth transition to the Crown entity.

33. The establishment unit and advisory board could begin work on developing a National Access Strategy including priorities for access, reviewing mapping needs and approaches, advising on the nature and scale of a proposed contestable fund, and developing a code of responsible conduct.

34. I propose to accept the Panel’s recommendation that the Crown entity be called Te Ara o Papatuanuku (“Pathways of Mother Earth”) (the New Zealand Access Commission), subject to consultation with the Māori Language Commission and Te Punī Kōkiri and the advisory board.

Mapping existing public access

35. The Panel concluded that the lack of appropriate mapping of existing public access is a key concern for stakeholders and the public. It recommended that the Crown entity be responsible for facilitating and co-ordinating the provision of information about access. The Panel further recommended that the Crown entity be made responsible for establishing and managing a single, publicly accessible and officially recognised database of access information, and that work on this task commence as soon as possible.

36. LINZ has developed a pilot database that enables the spatial cadastral database to be overlaid on the topographical database or aerial photographs. This illustrates the potential to develop a public database that would identify all forms of access in a useful and practical form. I understand that there are technical issues in correlating these databases and limits to the detail and accuracy that can be shown on maps at reasonable cost.

37. There is a need for further analysis and discussions with agencies and stakeholders over the accuracy and level of detail required for the maps to be useful.

38. The Panel recommended that LINZ examine ways of depicting private roads on topographical maps in a way that makes them more readily distinguishable from public roads. This was because the Panel received a complaint that members of the public sometimes use these roads without permission. Officials do not consider this to be a significant problem.

39. The location of marginal strips created on the disposal of Crown land since 1990 is not shown in the LINZ cadastral records. This also applies to many disposals between 1987 and 1990. This limits the scope to map the location of all public access along water margins. The Government has recently approved measures that will ensure that the location of marginal strips created on disposals of Crown land from 1 July 2007 are recorded, and a LINZ pilot project to test the practicality of using imaging techniques to locate existing marginal strips (CAB Min (07) 14/1).

40. Some territorial authorities, DIA and MOT are concerned that raising expectations of unimpeded access to unformed legal roads by making information about their location more readily available may increase the inappropriate use of these roads by motor vehicles. I note, however, that information about the location of unformed
legal roads is already publicly available through Landonline and some commercial providers.

41. The concerns that mapping will encourage the inappropriate use of unformed legal roads can be alleviated by ensuring that additional powers and obligations for territorial authorities come into effect either before maps are published or in parallel (see paragraphs 45 and 46 below).

42. The provision of comprehensive information about walking access is critical to the success and credibility of the Crown entity. I propose that the establishment unit undertake a stocktake of existing mapping information and a preliminary analysis of the public’s likely requirements and priorities. It is likely that the Crown entity would contract the provision of maps to an external provider.

**Issues relating to unformed legal roads**

43. Unformed legal roads are vested in territorial authorities but, in a broad sense, are held on behalf of all New Zealanders. Legal research and advice to the Panel clearly shows that an unformed legal road has the same status and rights attached to it as a formed road. That is, the public have the right to pass and re-pass on foot, on horse or in vehicles without hindrance, subject to rules which apply to all roads. Policies for unformed legal roads, therefore, may have implications for formed roads.

44. The Panel recommended that territorial authorities generally should be required to retain unformed legal roads for possible future use by the public. It was concerned that territorial authorities may seek to stop roads of no immediate use for formed road, but useful for walking access. DIA has begun work on a review of unformed legal roads that is intended to evaluate whether any legislative changes are needed to provide for the future ownership, management and use of unformed legal roads. The terms of reference for the review are yet to be considered by Ministers.

45. When water margin roads are stopped they become esplanade reserve, although territorial authorities are able to set aside this provision in district plans. The stopping of unformed legal roads is subject to an objection procedure in the Local Government Act 1974 and needs the consent of the Minister for Land Information in the case of rural roads. The Minister for Land Information can also stop roads under the Public Works Act 1981, although I understand that this power is exercised only where there is unlikely to be any public objection. It would be useful if the policies of territorial authorities and the Minister for Land Information on the stopping of unformed legal roads could be clarified. This would provide greater transparency and give some assurance about the future of these roads. I propose that LINZ, DIA and MOT and the establishment unit should explore this issue in consultation with Local Government New Zealand (LGNZ).

46. The Panel also noted that territorial authorities sometimes face practical difficulties in enabling public access over unformed legal roads and do not appear to give high priority to the removal of obstructions. The Panel recommended that a remedy be made available to the public that will oblige territorial authorities to require the removal of unlawful obstructions on unformed legal roads, particularly if the obstructions prevent foot passage. I consider that this proposal has merit but more analysis is needed on how it might work in practice.

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1 "Stopping" is the legal term for removing the "road" status from land designated as road. Once stopped the land is no longer road. It is distinct from closing a road, which means that the road is for the time being not available for use, but its underlying status is road remains.
47. Some territorial authorities are concerned that there are circumstances where the use of unformed legal roads by vehicles could cause environmental damage or be unsafe. I agree that the scope for territorial authorities to regulate the use of unformed roads by vehicles needs to be clarified.

48. There are examples of unformed legal roads that are of no value for access or any other use, but which could be stopped in exchange for useful access. The stopping of unformed legal roads in exchange for more appropriate access poses complex legal and procedural challenges. Options for exchanging roads for alternative access should be considered further, as there will be limited resources available to purchase new access.

49. Work on a legislative remedy for the removal of unlawful obstructions and on powers to allow territorial authorities to better manage the use of unformed legal roads for appropriate activities should proceed in parallel with the mapping process. The work should be done on a timetable that will not delay the mapping process, which will no doubt take a year or two to reach the "first edition".

50. I propose that MAF, DIA, MOT and the advisory board, consider in more detail the need for legislative change to clarify the legal duty of territorial authorities to ensure that unformed legal roads are kept clear of obstructions and provide for territorial authorities to regulate the use of unformed legal roads by vehicles to protect the environment, culturally significant sites or public safety, and report to the Committee by 30 June 2008. These recommendations would be an interim solution until the outcome of the DIA review of unformed legal roads, which would consider these matters amongst a broader range of considerations.

New access

51. Mechanisms for creating legal access over Crown-owned land include establishing of marginal strips on sale or disposal of land in the Conservation Act 1987; providing access through the review or the transfer of the tenure of high country pastoral leases under the Crown Pastoral Land Act 1998; and various powers under the Land Act 1948 and the Public Works Act 1981. The Crown may also allow public access over Crown land where this is contrary to a Crown lease and it has no other reason to oppose access.

52. Existing mechanisms for creating legal access over private land are outlined below.

Resource Management Act, 1991 (RMA)

53. The Panel recommended that the Crown entity work with central and local government to investigate how the use of the RMA for access could be improved, including the merits or otherwise of the four hectare requirement for esplanade reserves. I agree that the Crown entity should work with local authorities as proposed by the Panel, but I do not agree that the four hectare requirement should be amended. There is no clear case for change.

54. Esplanade strips and access strips may also be created by negotiation with the landowner. The cost of reaching agreement (which may involve compensation) often prevents councils from pursuing this option. The Panel recommendation of a contestable fund is considered below.

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2 The RMA provides that when land adjoining relevant water margins is subdivided to lots of 4 hectares or less, an esplanade reserve of 20 metres in width adjoining the water margin must be created. The relevant water margins are the coast or a river of an average width of 3 metres or more or a lake of 8 hectares in area or more. No compensation is payable to the landowner. There is scope for the provision to be waived or for the width of the strip to be varied.
55. The Panel recommended that consideration be given to providing the Crown entity with status similar to that of a heritage protection authority so that it could request the Minister for Land Information to use compulsory acquisition powers under the Public Works Act 1981 (in exceptional circumstances only). Officials do not recommend that the heritage protection order provisions of the RMA be amended in the manner suggested because its use can be controversial and the recommended access policy is based on negotiation and agreement. I agree with this advice.

Overseas Investment Act 2005

56. The Overseas Investment Act 2005 regulates the acquisition of sensitive assets in New Zealand by overseas persons. The additional view in the Panel's report recommended that a simplified version of the public interest provisions of the Overseas Investment Act 2005 be developed and applied to all sales of land.

57. This would be a major and very controversial policy and I have not detected any pressure for a change of this nature. I support, however, the recommendation of the Panel that there should be a review in five years' time of the effectiveness of the Overseas Investment Act 2005 in protecting and providing for recreational access.

Public Works Act 1981

58. Land for walking access could be compulsorily acquired using the Public Works Act 1981. The use of this statute tends to be confined to the acquisition of land or an interest in land for essential public infrastructure, and even in these circumstances its use can be controversial. Consequently, while in principle it could be used for walking access, in practice this would be highly unlikely.

Tenure review of Crown pastoral leases

59. The Crown Pastoral Land Act 1998 provides for the review of Crown pastoral leases, and the conversion of land subject to these leases into freehold or conservation land. Certain and enduring access (in the form of easements or marginal strips) can be created when the land is converted to freehold.

60. On 5 June 2007 Cabinet Business Committee directed LINZ, in consultation with DOC:

- to report to the Minister for Land Information and the Minister of Conservation by 31 July 2007 on how Land Act provisions might be used to provide public access through pastoral lease land; and
- in consultation with the Ministry of Agriculture and Forestry, to ensure that any proposals as to how Land Act provisions might be used to provide public access through pastoral lease land are then integrated with the government response to the Walking Access Consultation Panel report and work to address the implications of rent increases for pastoral lease land [CBC Min (07) 10/12].

61. Access over pastoral lease land can also be achieved through easements or the acquisition of land, either by negotiation, or compulsorily using provisions in the Land Act 1948.

62. LINZ recommends that negotiation be the preferred mechanism for securing new access over Crown pastoral lease properties. I consider that a process of negotiating access with Crown pastoral lease holders would be consistent with the Panel's recommendations in respect of fee simple (privately owned) land.

New Zealand Walkways Act 1990
63. The Walkways Act provides for access over private land to be secured through easements or leases. Walkways can also be created over public land.

64. Existing legal mechanisms for establishing new access are adequate, but the Walkways Act is underutilised. Transferring operational responsibility for the Walkways Act to the Crown entity will enable its potential to be realised.

Alternative view

65. An alternative view in the Panel’s report recommended that when a private land owner did not agree to access there should be a back-up mechanism to determine whether access should be provided. I consider that the provision of walking access to land does not justify a new mandatory provision for the taking of an interest in land.

Contestable fund

66. The Panel recommended that a contestable fund ("Te Ara o Papatuanuku Fund for Access") be established. The purpose of the fund would primarily be to provide for negotiated public access over private land. Funding could cover compensation to the landowner and the costs of: bringing communities together to negotiate an outcome; constructing and maintaining tracks or marked routes, fencing, stiles, signage and facilities; and providing information. Any asset created should be protected for the life of the asset, and any access should be certain and enduring. Measures that would achieve this include ownership of land, leases, easements, and covenants.

67. The Fund would be available to local authorities, other organisations (such as hapū/whanau, trusts, landcare groups and tramping clubs) and joint initiatives to create public access. The Fund could also contribute to compensation for the establishment of esplanade reserves, esplanade strips and access strips. It would not be available to fund commercial walking operations.

68. Funding would be administered centrally by the Crown entity, to minimise administration costs, ensure consistency in decision-making and provide a strong accountability structure. Appropriate contractual arrangements would be needed between the Crown entity and the initiator and/or proponent of an access arrangement to ensure proper and accountable use of public money.

69. I propose that the establishment unit work with the advisory board to develop the policy and organisational framework for the Fund. I also propose that the Committee invite the Minister for Rural Affairs to submit a New Initiatives Bid for the 2008/09 Budget process on the amount of funding needed to ensure that the Fund will operate effectively. An indicative amount for a Fund that would support local authority and community organisation initiatives to establish new access is $2-3 million per year.

Trespass

70. The Panel recommended that the Government consider the implications of a proposal for amendments to the Trespass Act 1980. The proposal aims to reduce uncertainty around the public’s right to use existing access along water margins. It would provide a defence against trespass where there is uncertainty about the precise location of public land and where the water margin has been affected by erosion. The proposal could also apply more generally to unformed legal roads.

71. This is a complex topic which requires further analysis of the implications of the proposed legislative change and further consultation.
72. I propose that the Committee direct the establishment unit, in consultation with advisory board and the Ministry of Justice, to report to the Committee on the implications of this proposal and recommended policy options by 30 June 2008.

"Exclusive capture"

73. "Exclusive capture" is an informal term used to describe the practice of landholders denying access over private land to anglers and hunters and in effect establishing exclusive private use of public resources (such as sports fish and game) for commercial benefit. There is a lack of documented evidence of the extent of this practice.

74. The Panel did not support any change in the law that would oblige landholders to provide access across private land to sports fish and game. It examined four regulatory options that would, if successful, have this effect. The Panel supported a non-regulatory approach, including improving information about existing access rights, clarifying Crown ownership of riverbeds, and negotiating new access rights.

75. An alternative view recommended the use of a concessions regime and a discretionary power to close fisheries as remedies for "exclusive capture". These have implications for private property rights and require further consideration.

76. I agree with the Panel and do not support a regulatory approach. I propose that the Minister of Conservation be invited to consider the options outlined in the Panel's report taking into account its view that there should be no mandatory requirement for landholders to provide access over their land.

Pruning of agreed access being a public place for RMA purposes

77. The Panel recommended that the Government investigate options for amending the RMA to ensure that landholders who voluntarily provide access on their land are not penalised as a consequence. This recommendation reflected concerns that an Environment Court decision on a subdivision may be discouraging landowners agreeing to access over their land, as values associated with the access could jeopardise future changes in land use that required resource consent.

78. The subdivision proposal was declined partly because of concern about its potential impact on the view from a walking track to which the public was permitted access. The track has subsequently been closed to the public. This case does not create a general principle that the public will always enjoy rights over and above those of landowners when invited to use a private track, but it may discourage landowners from agreeing to access over their land.

79. I do not see the need for any legislative change at present. The Crown entity, in liaison with the Ministry for the Environment, should monitor RMA decisions for any indication that any past trend in access arrangements negotiated over private land is being undermined by this or future decisions on changes in land use.

Landholder liability

80. The Panel recommended that the Department of Labour review the bulletin "If Visitors to My Farm are Injured, Am I Liable?" in consultation with landholders, recreation organisations and the Crown entity to further clarify landholder liability and to explain the Department's relevant compliance policies. I see merit in this

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3 The Wilson Farm Partnership v Queenstown Lakes District Council [2005]
advice and propose that the Committee direct the Department of Labour to review its current advice in consultation with the establishment unit.

81. The Panel also recommended that consideration be given to a minor amendment the Health and Safety in Employment Act 1992 (HSE Act) to exclude from the “all practicable steps” category circumstances where there is a charge to recover costs incurred in facilitating access, but not extending to a charge for gain or reward.

82. When the HSE Act was reviewed in 2002, it was subject to explicit policy decisions; therefore, I do not recommend amending the legislation.

83. I note the underlying concerns of the Panel in relation to this matter, and consider that guidance to clarify farmer’s duties when facilitating access to their land would be the best way to address these concerns.

84. The Panel noted that there may also be landholder liability under the Occupiers’ Liability Act 1962 and that there is a partial exemption from this act under the Walkways Act. It recommended a similar exemption should be considered in respect of persons on rural land for recreation or leisure with the permission of the landholder. I support this recommendation.

Other matters

85. The terms of reference of the Panel focused on walking access but also allowed the Panel to report to me on other matters related to access that appear to warrant my consideration. Many submissions to the Panel referred to other recreational access issues such as access with bicycles, motor vehicles, firearms and dogs. Sometimes these issues are difficult to separate from strict walking access and, therefore, I consider that the access organisation should have the scope to deal with these wider access issues when appropriate.

86. The Panel was concerned about security in rural areas, but considered this topic to be outside the scope of the access organisation. The Panel considered three approaches which I propose the Committee should invite the Minister of Police to consider:

- strengthening Neighbourhood Watch in rural areas;
- increasing active engagement between Police and rural communities; and
- increasing Police numbers in rural areas or creating an appropriate new law enforcement position.
### Indicative timetable for policy decisions

87. If the recommendations in this paper are agreed, the subsequent policy decisions that I will ask this Committee to consider are show below.

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<th>Indicative date</th>
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| September 2007  | Cabinet Committee on Appointments and Honours | • Appointments to Advisory Board; and  
|                 |       | • Terms of Reference for Advisory Board. |
| October 2007    | Minister for Rural Affairs | Advisory board appointed. |
| December 2007   | Cabinet Policy Committee | • final decisions on establishment of new entity,  
|                 |       | and if approved, on Crown entity functions and responsibilities;  
|                 |       | • approval to issue drafting instructions; and  
|                 |       | • legislative priority. |
| June 2008       | Cabinet Policy Committee | Report back on:  
|                 |       | • retention of unformed legal roads;  
|                 |       | • regulation of vehicles and removal of obstructions from unformed legal roads;  
|                 |       | • exchange of unformed legal roads for alternative access; and  
|                 |       | • possible changes to the law on trespass. |

### Consultation

88. The following government departments have been consulted on, and their views reflected in, this paper: the Ministry for the Environment, Te Puni Kōkiri (the Ministry of Māori Development), the Ministry of Economic Development, the Department of Conservation, the Department of Internal Affairs, the Ministry of Transport, the Ministry of Justice, the Ministry of Tourism, Land Information New Zealand, the Department of Labour, the Treasury, the State Services Commission and the Department of the Prime Minister and Cabinet.

89. Sport & Recreation New Zealand (SPARC) has advised that it is leading a cross government review of outdoor recreation in partnership with key outdoor recreation sector groups. SPARC and MAF will work together to ensure the outdoor recreation review and decisions on the Panel's recommendations are co-ordinated.

90. Local Government New Zealand has also been consulted.

### Financial Implications

91. This paper does not seek any new funding for walking access. The Government has provided $1.894 million (exclusive of GST) for walking access in Vote: Agriculture and Forestry. This provision reflected the earlier footway proposal and was estimated to be sufficient to fund the operating costs of a small access organisation.

92. DIA and MOT have suggested that making available more information about the location of unformed legal roads may place financial pressure on local authorities.

Human rights

94. The proposals in this paper do not raise any particular issues in relation to the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993. A final assessment as to the consistency of the proposals with the Bill of Rights Act will be completed once legislation is drafted.

Legislative implications

95. There are no legislative implications under the proposals in this paper. But, if the 'in principle' decision is confirmed, then a bill of medium complexity will be required. Agreement to prepare drafting instructions will, if necessary, be sought in the December paper.

Regulatory impact analysis

96. No new regulatory powers are proposed in this paper. A regulatory impact statement, if required, will be provided in the proposed reports to Cabinet Policy Committee by 5 December 2007 and 30 June 2008.

Publicity

97. There is a high level of stakeholder interest in the outcome of the Panel's recommendations. It is important that the Government's response be announced and certainty given to landholders in particular. I propose that the Committee agree to release this paper, and invite the Minister for Rural Affairs to issue an appropriate media statement.

Recommendations

I recommend that the Committee:

1. note that the Cabinet Policy Committee (POL) directed officials to report to POL by 1 August 2007 on the report of the Walking Access Consultation Panel with recommendations on policy implications and implementation matters (POL Min (07) 3/11).

Access by negotiation

2. agree that new walking access over private land, including Māori land, be achieved by negotiation and agreement with the landholder (other than access established by existing statutory processes).

3. agree that priorities for the negotiation of access over private land include:
   a. areas along the coast where public access on both the foreshore and the dry margin is unavailable;
   b. restoring and realigning access along water margins where agreement can be reached between landholders, the Crown and/or local authorities;
   c. creating new access along water margins where none currently exists; and
   d. access to the coast where no practical public access is available.

4. agree that matters for negotiation of access over private land can include the carrying of firearms and access with dogs, bicycles and motor vehicles.
A new access organisation

5. agree, in principle, to establish a Crown entity responsible for advice and to implement walking access policies.

6. agree that an establishment unit be created within the Ministry of Agriculture and Forestry (MAF) and be responsible to the Director-General of MAF.

7. invite the Minister for Rural Affairs, in consultation with the Minister of State Services, to report to POL by 5 December 2007 with advice on whether to confirm the decision in principle to establish a new Crown entity, including its merits relative to any alternative organisational structure and, if confirmed, to seek authority to issue drafting instructions for the necessary legislation.

8. agree, in principle, that the functions of the Crown entity will be:
   a. provision of national leadership, including a national strategy, and co-ordination of access among key stakeholders and relevant central and local government organisations;
   b. the provision of impartial and robust advice on access;
   c. local/regional leadership and co-ordination to help local groups with their access issues;
   d. mediation of disputes over walking access issues, including the ability to initiate negotiations;
   e. the reference of disputes about legal access to an appropriate authority;
   f. the creation and administration of walkways made under the Walkways Act 1990, with planning and supervision focused at a local level;
   g. the establishment and maintenance of a public access mapping database;
   h. administration of a contestable fund for the purpose of negotiating walking access either under the provisions of the Walkways Act 1990 or new or other existing legislation;
   i. the receipt and management of private funding contributions (including sponsorships) for the promotion of walking access;
   j. research, education and participation in external access-related topics and programmes;
   k. the development, promotion and maintenance of a code of responsible conduct.

9. agree, in principle, that the Crown entity be empowered to:
   a. consider all forms of access, in consultation with relevant organisations, (there are efficiencies in an access organisation dealing with all forms of access) but with walking access as its priority area of concern; and
   b. acquire access over private land and fund the acquisition of such rights.

10. direct officials, when considering the functions of the Crown entity, to take into account the Panel's additional recommendations on its functions.

11. agree, in principle, that the administration of the New Zealand Walkways Act 1990 be transferred to the department that supports the responsible Minister (MAF).

12. note that transitional arrangements would need to be agreed between MAF and DOC in respect of funding of walkway maintenance and any legal agreements for access to private land for walkways.

14. **note** that the operational management of walkways on land administered by the Department of Conservation (DOC) will be subject to a Memorandum of Understanding between the Crown entity and DOC.

**An advisory board**

15. **agree** to appoint an advisory board to the establishment unit.

16. **invite** the Minister for Rural Affairs to submit nominations and terms of appointment for the advisory board to the Cabinet Appointments and Honours Committee (APH) by 20 September 2007.

17. **note** that the Minister for Rural Affairs intends the advisory board to become the establishment board for the new entity should the decision in principle to establish a Crown entity be confirmed.

18. **note** that the Panel recommended that the access organisation be called Te Ara o Papatuanuku (the New Zealand Access Commission).

**Establishment unit**

19. **direct** MAF (the establishment unit), in consultation with the advisory board, once established, to:

   a. begin negotiations on a Memorandum of Understanding with DOC on operational management of walkways on land administered by DOC;

   b. develop a New Zealand Access Strategy, including new access and priorities for funding; and

   c. co-ordinate the development of a voluntary code of responsible conduct.

**Mapping of existing public access**

20. **agree** that the establishment unit undertake a stocktake of existing mapping information and a preliminary analysis of the public’s likely requirements and priorities before any information is published.

21. **agree** not to pursue the Panel’s recommendation that Land Information New Zealand (LINZ) examine ways of depicting private roads on topographical maps in a way that makes them more readily distinguishable from public roads.

**Issues relating to unformed legal roads**

22. **direct** MAF, LINZ, the Department of Internal Affairs, DOC and the Ministry of Transport, in consultation with Local Government New Zealand, to report back to Cabinet Policy Committee by 30 June 2008 on:

   a. the proposal that territorial authorities should generally be required to retain unformed legal roads for possible future use by the public;

   b. the proposal that territorial authorities should be provided with more powers to manage the use of unformed legal roads, provided that this is associated with a duty to keep unformed legal roads clear of obstructions to appropriate uses; and

   c. the proposal that consideration be given to stopping or resuming Crown ownership of some unformed legal roads to facilitate an exchange for alternative access.
23. **note** that any recommendations made in the June 2008 report back (paragraph 22) may only provide interim solutions pending the outcome of the Department of Internal Affairs' review of unformed legal roads, which will consider what legislative changes, if any, are desirable for the future ownership, management and use of unformed legal roads.

24. **agree** that the establishment unit:
   a. work with territorial authorities and central government agencies to develop consistent and appropriate policies for managing unformed legal roads for access; and
   b. consider developing national guidelines on the administration of unformed legal roads for access.

**Adequacy of trigger mechanisms for the creation of new access**

25. **note** that existing legal mechanisms for creating access are adequate.

26. **invite** the Minister of Finance to report to Cabinet Policy Committee in 2012 on the effectiveness of the Overseas Investment Act 2005 in protecting and providing for recreational access.

27. **agree** that the Crown entity not be given the status of a heritage protection authority under the Resource Management Act 1991.

28. **agree** that the four-hectare for the provision of esplanade reserves on subdivision not be changed.

**A contestable fund**

29. **note** the intention to seek funding to establish a contestable fund to enhance public access over private land and other matters relevant to access to which local authorities and other organisations might apply.

**Other matters**

30. **agree** that there is insufficient consensus amongst stakeholders and the public to support the alternative recommendations of one Panel member.

31. **invite** the Minister of Conservation to consider the Panel's recommendations on "exclusive capture" taking into account the Panel's view that there should be no mandatory requirement for landholders to provide access over their land.

32. **direct** the Department of Labour, in consultation with the establishment unit, to
   a. review its current advice to further clarify landholder liability;
   b. explain the Department's relevant compliance policies to the public; and
   c. produce guidance on section 16(2) of the Health and Safety in Employment Act 1992 to clarify farmers' duties when facilitating access to their land.

33. **direct** MAF, in consultation with the advisory board and the Ministry of Justice, to report back to Cabinet Policy Committee by 30 June 2008 on the implications and recommended policy options of the proposal to amend the Trespass Act 1980 to reduce the uncertainty of the right of the public to use existing public access alongside water margins and unformed legal roads that do not adjoin water margins.

34. **direct** MAF, in consultation with the Ministry of Justice, to report back to the Cabinet Policy Committee by 30 June 2008 on implications and options for an exemption to
the Occupiers' Liability Act 1962 similar to the Walkways Act in respect of persons on rural land for recreation or leisure.

35. **invite** the Minister of Police to consider the Panel's recommendations on security in rural areas.

**Funding**

36. **note** that $1.894 million is already provided for in Vote: Agriculture for walking access in anticipation of establishing an access agency in 2005/2006 and that this funding will be used to implement the decisions in this paper, including the operating costs of the advisory board and the establishment unit.

37. **invite** the Minister for Rural Affairs to submit a New Initiatives Bid for 2008/2009 on the costs of the proposed Crown entity and contestable fund.

**Publicity**

38. **agree** that the Minister for Rural Affairs issue an appropriate media statement.

39. **agree** to the release of this Cabinet Committee paper once decisions on its recommendations have been confirmed by Cabinet.

Hon Damien O'Connor  
Minister for Rural Affairs  
31 JUL 2007
Consultation on Cabinet and Cabinet Committee Submissions

Certification by Department

Guidance on the consultation requirements for Cabinet and Cabinet committee papers is provided in chapter 11 of the Step by Step Guide: Cabinet and Cabinet Committee Processes, available at

Departments/agencies consulted: The attached submission has implications for the following departments/agencies whose views have been sought and are accurately reflected in the submission:

- Environment
- Public Health
- Economic Development
- Conservation
- Internal Affairs
- Transport
- Justice
- Tourism
- Land
- Labour
- Treasury
- SDMC

Departments/agencies informed: In addition, the following departments/agencies have an interest in the submission and have been informed:

- SPARC

Others consulted: Other interested groups have been consulted as follows:

- Local Government New Zealand

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<th>Signature</th>
<th>Name, Title, Department</th>
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<tr>
<td></td>
<td>Mike Selvon, Director, MAF</td>
<td>25/1/07</td>
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Certification by Minister

Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet committee. The attached proposal:

Consultation at Ministerial level
- [X] has been consulted with the Minister of Finance
  [required for all submissions seeking new funding]
- [ ] has been consulted with the following Minister(s)
- [ ] did not need consultation with other Ministers

Discussion with Labour/Progressive caucuses
- [ ] has been or [X] will be discussed with the government caucuses
- [ ] does not need discussion with the government caucuses

Discussion with other parties
- [ ] has been discussed with the following other parties represented in Parliament:
  - [ ] New Zealand First  - [ ] United Future  - [ ] Green Party  - [ ] Other [specify]...
  [X] will be discussed with the following other parties represented in Parliament:
  - [X] New Zealand First  - [ ] United Future  - [ ] Green Party  - [ ] Other [specify]...
- [ ] does not need discussion with other parties represented in Parliament.

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Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1992, by persons with the appropriate authority.

Minister for Rural Affairs

Copies to:
Prime Minister
Deputy Prime Minister
Minister of Finance
Hon Jim Anderton
Minister of Agriculture
Minister of State Services
Minister of Transport
Minister for Economic Development
Minister for Sport and Recreation
Minister of Maori Affairs
Minister of Justice
Minister of Local Government
Minister of Labour
Minister of Conservation
Minister of Tourism
Minister for Land Information
Acting Minister for the Environment
Secretary, POL


On 13 August 2007, following reference from the Cabinet Policy Committee (POL), Cabinet:


2 invited the Minister of State Services, Minister for Sport and Recreation and Minister for Rural Affairs to further consider the recommendations relating to the proposal for a new access organisation and to provide revised recommendations to POL on 15 August 2007, if necessary.

Martin Bell

for Secretary of the Cabinet

Reference: CAB (07) 364; POL Min (07) 17/10
RELEASED UNDER THE OFFICIAL INFORMATION ACT
Cabinet Policy Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.


On 15 August 2007, the Cabinet Policy Committee (POL):

Background

1 noted that in February 2007, the Cabinet Policy Committee (POL):
   1.1 noted that the Walking Access Consultation Panel has submitted its report to the Minister for Rural Affairs;
   1.2 noted that all key stakeholder groups support the establishment of an independent access organisation with powers and functions to coordinate, lead and promote the use of existing public access and the negotiation of new access;
   1.3 noted that one Panel member has recorded an alternative view about statutory powers to establish new walking access along water margins, and to "public natural resources" such as sports fish where there is so-called "exclusive capture";
   1.4 noted that the majority of the Panel does not support the alternative measures referred to in paragraph 1.3;
   1.5 directed the Ministry of Agriculture and Forestry (MAF), in consultation with the Treasury, State Services Commission, Department of Conservation (DOC), Land Information New Zealand (LINZ), Department of Internal Affairs, Ministry of Justice and other interested departments, to report to POL by 1 August 2007 with recommendations on policy implications and implementation matters;

[POL Min (07) 3/11]

Access by negotiation

2 agreed that new walking access over private land, including Maori land, be achieved by negotiation and agreement with the landholder (other than access established by existing statutory processes);

3 agreed that priorities for the negotiation of access over private land include:
   3.1 areas along the coast where public access on both the foreshore and the dry margin is unavailable;
3.2 restoring and realigning access along water margins where agreement can be reached between landholders, the Crown and/or local authorities;

3.3 creating new access along water margins where none currently exists;

3.4 access to the coast where no practical public access is available;

4 agreed that matters for negotiation of access over private land can include the carrying of firearms and access with dogs, bicycles and motor vehicles;

A new access organisation

5 agreed in principle, subject to the report referred to in paragraph 8, to establish a Crown entity responsible for advice and to implement walking access policies;

6 agreed that an establishment unit be created within MAF and be responsible to the Director-General of MAF;

7 noted that the Panel recommended that the access organisation be called "Te Ara o Papatuanuku" (the New Zealand Access Commission);

8 invited the Minister for Rural Affairs, in consultation with the Minister of State Services, to report to POL by 5 December 2007 with advice on whether to confirm the decision in principle to establish a new Crown entity, including its merits relative to any alternative organisational structure and, if confirmed, to seek authority to issue drafting instructions for the necessary legislation;

9 agreed in principle, subject to the report referred to in paragraph 8, that the functions of the Crown entity will be:

9.1 the provision of national leadership, including a national strategy, and coordination of access among key stakeholders and relevant central and local government organisations;

9.2 the provision of impartial and robust advice on access;

9.3 local/regional leadership and coordination to help local groups with their access issues;

9.4 mediation of disputes over walking access issues, including the ability to initiate negotiations;

9.5 the reference of disputes about legal access to an appropriate authority;

9.6 the creation and administration of walkways made under the New Zealand Walkways Act 1990, with planning and supervision focused at a local level;

9.7 the establishment and maintenance of a public access mapping database;

9.8 administration of a contestable fund for the purpose of negotiating walking access either under the provisions of the New Zealand Walkways Act 1990 or new or other existing legislation;
9.9 the receipt and management of private funding contributions (including sponsorships) for the promotion of walking access;

9.10 research, education and participation in external access-related topics and programmes;

9.11 the development, promotion and maintenance of a code of responsible conduct;

10 agreed in principle, subject to the report referred to in paragraph 8, that the Crown entity be empowered to:

10.1 consider all forms of access, in consultation with relevant organisations, (there are efficiencies in an access organisation dealing with all forms of access), but with walking access as its priority area of concern;

10.2 acquire access over private land and fund the acquisition of such rights;

11 directed officials, when considering the functions of the Crown entity, to take into account the Panel’s additional recommendations on its functions;

12 agreed in principle, subject to the report referred to in paragraph 8, that the administration of the New Zealand Walkways Act 1990 be transferred to the department that supports the Minister responsible for the Crown entity (MAF);

13 noted that transitional arrangements would need to be agreed between MAF and DOC in respect of funding of walkway maintenance and any legal agreements for access to private land for walkways;

14 agreed in principle, subject to the report referred to in paragraph 8, that operational responsibility for the New Zealand Walkways Act 1990 be transferred to the Crown entity;

15 noted that the operational management of walkways on land administered by DOC will be subject to a Memorandum of Understanding between the Crown entity and DOC;

Establishment unit

16 directed MAF (the establishment unit), in consultation with the advisory board referred to in paragraph 17 below, once established, to:

16.1 begin negotiations on a Memorandum of Understanding with DOC on operational management of walkways on land administered by DOC;

16.2 develop a New Zealand Access Strategy, including new access and priorities for funding;

16.3 coordinate the development of a voluntary code of responsible conduct;

An advisory board

17 agreed to appoint an advisory board to the establishment unit;
invited the Minister for Rural Affairs to submit nominations and terms of appointment for the advisory board to the Cabinet Appointments and Honours Committee by 20 September 2007;

noted that the Minister for Rural Affairs intends the advisory board to become the establishment board for the new entity should the decision in principle to establish a Crown entity be confirmed;

Mapping of existing public access

agreed that the establishment unit undertake a stock take of existing mapping information and a preliminary analysis of the public’s likely requirements and priorities before any information is published;

agreed not to pursue the Panel’s recommendation that LINZ examine ways of depicting private roads on topographical maps in a way that makes them more readily distinguishable from public roads;

Issues relating to unformed legal roads

directed MAP, LINZ, the Department of Internal Affairs, DOC and the Ministry of Transport, in consultation with Local Government New Zealand, to report to POL by 30 June 2008 on:

22.1 the proposal that territorial authorities should generally be required to retain unformed legal roads for possible future use by the public;

22.2 the proposal that territorial authorities should be provided with more powers to manage the use of unformed legal roads, provided that this is associated with a duty to keep unformed legal roads clear of obstructions to appropriate uses;

22.3 the proposal that consideration be given to stopping or resuming Crown ownership of some unformed legal roads to facilitate an exchange for alternative access;

noted that any recommendations made in the June 2008 report referred to in paragraph 22 may only provide interim solutions pending the outcome of the Department of Internal Affairs’ review of unformed legal roads, which will consider what legislative changes, if any, are desirable for the future ownership, management and use of unformed legal roads;

agreed that the establishment unit:

24.1 work with territorial authorities and central government agencies to develop consistent and appropriate policies for managing unformed legal roads for access;

24.2 consider developing national guidelines on the administration of unformed legal roads for access;

Adequacy of trigger mechanisms for the creation of new access

noted that existing legal mechanisms for creating access are adequate;
agreed that there is insufficient consensus amongst stakeholders and the public to support the alternative recommendations of one Panel member that there be additional trigger mechanisms for achieving new public access;

invited the Minister of Conservation to consider the Panel’s recommendations on “exclusive capture” taking into account the Panel’s view that there should be no mandatory requirement for landholders to provide access over their land;

invited the Minister of Finance to report to POL in 2012 on the effectiveness of the Overseas Investment Act 2005 in protecting and providing for recreational access;

agreed that the Crown entity not be given the status of a heritage protection authority under the Resource Management Act 1991;

agreed that the four hectare for the provision of esplanade reserves on subdivision not be changed;

Issues relating to Crown pastoral lease land

noted that Crown pastoral leases are granted subject to provisions of the Land Act 1948, under which Parliament has made it a condition of pastoral leases that the Crown can provide public access through pastoral lease land, with or without the consent of the lessee;

noted that such access can be provided through existing statutory mechanisms under the Land Act, by the creation of easements (section 60) or the resumption of land for roads (section 117), with the lessee being protected by a requirement for compensation and rent reduction;

noted that:

33.1 the powers in the Land Act enable the Crown to provide access through pastoral lease land that for historical reasons was not achieved originally in the survey process;

33.2 the historical reasons for the Land Act powers and the relative lack of public legal access through high country pastoral leases were outlined in a submission entitled South Island High Country: Landscape, Biodiversity and Access Issues, considered by the Cabinet Business Committee in June 2007 [CBC Min (07) 10/12];

invited the Minister for Land Information (lead) and the Minister of Conservation to scope with their departments where reasonable public access is needed through pastoral lease land;
agreed that:

35.1 negotiation and agreement with lessees be the preferred means for determining the position of new access through pastoral lease land;

35.2 the Minister for Land Information may authorise LINZ to engage in such negotiations when addressing rental affordability issues, and on other occasions as appropriate;

Liability, trespass and security

36 directed the Department of Labour, in consultation with the establishment unit, to:

36.1 review its current advice to further clarify landholder liability;

36.2 explain the Department's relevant compliance policies to the public;

36.3 produce guidance on section 16(2) of the Health and Safety in Employment Act 1992 to clarify farmers' duties when facilitating access to their land;

37 directed MAF, in consultation with the advisory board and the Ministry of Justice, to report to POL by 30 June 2008 on the implications and recommended policy options of the proposal to amend the Trespass Act 1980 to reduce the uncertainty of the right of the public to use existing public access alongside water margins and unformed legal roads that do not adjoin water margins;

38 directed MAF, in consultation with the Ministry of Justice, to report to POL by 30 June 2008 on implications and options for an exemption to the Occupiers' Liability Act 1962, similar to the New Zealand Walkways Act 1990 in respect of persons on rural land for recreation or leisure;

39 invited the Minister of Police to consider the Panel's recommendations on security in rural areas;

A contestable fund

40 noted the intention to seek funding to establish a contestable fund to enhance public access over private land and for other matters relevant to access, to which local authorities and other organisations might apply;

Funding

41 noted that $1.894 million is already provided for in Vote Agriculture for walking access, in anticipation of establishing an access agency in 2005/06 and that this funding will be used to implement the above decisions, including the operating costs of the advisory board and the establishment unit;

42 noted that the Minister for Rural Affairs will submit a New Initiatives Bid for 2008/09 on the costs of the proposed Crown entity and contestable fund;
Publicity

43 invited the Minister for Rural Affairs to issue an appropriate media statement;

44 noted that the Minister for Rural Affairs intends to release the paper under POL (07) 289.

Gerrard Carter
Secretary

Present:
Rt Hon Helen Clark (Chair)
Hon Dr Michael Cullen
Hon Jim Anderton
Hon Steve Maharey
Hon Phil Goff
Hon Annette King
Hon Trevor Mallard
Hon Pete Hodgson
Hon Mark Burton
Hon Damien O’Cinnin
Hon David Parker

Officials present from:
Office of the Prime Minister
Department of the Prime Minister and Cabinet

Copies to:
Cabinet Policy Committee
Chief Executive, DPME
Director PAG, DPME
PAG Subject Advisor, DPME
Secretary to the Treasury
Director-General, Ministry of Agriculture and Forestry (Agriculture)
State Services Commissioner
Secretary for Transport
Chief Executive, Ministry of Economic Development
Chief Executive, Sport and Recreation New Zealand
Chief Executive, Te Puni Kōkiri
Secretary for Justice
Secretary for Internal Affairs (Local Government)
Minister of Labour
Secretary of Labour
Minister of Conservation
Director-General of Conservation
Minister for Rural Affairs
General Manager, Ministry of Tourism
Director-General, Ministry of Agriculture and Forestry (Rural Affairs)
Minister for Land Information
Chief Executive, Land Information New Zealand
Secretary for the Environment
Walking Access: Unformed Legal Roads

Portfolio: Rural Affairs

Purpose

This paper seeks approval to two remedies to deal with concerns about impediments to the use of unformed legal roads for walking access.

This paper should be considered in conjunction with POL (08) 171: Walking Access: Trespass and Occupiers' Liability Legislation.

Previous Consideration

In August 2007 the Cabinet Policy Committee (POL) directed officials to report on the proposals that:

- territorial authorities should generally be required to retain unformed legal roads for possible future use by the public;
- territorial authorities should be provided with more powers to manage the use of unformed legal roads, provided that this is associated with a duty to keep unformed legal roads clear of obstructions to appropriate uses;
- consideration be given to stopping or resuming Crown ownership of some unformed legal roads to facilitate an exchange for alternative access;

and agreed that the Walking Access Commission establishment unit work with territorial authorities and central government agencies to develop consistent and appropriate policies for managing unformed legal roads for access, and consider developing national guidelines on the administration of unformed legal roads for access.

[POL Min (07) 18/20]

Summary

Two separate steps are proposed to cover the concerns about impediments to the use of unformed legal roads for walking access.

Comprehensive review

A Parliamentary petition sought amendments to the Local Government Act 1974 to reduce restrictions to access any roads where a fence has been constructed. The petition was not supported by the Local Government and Environment
Committee on the basis that the law already covered the issues. In response to the Committee’s report the Minister of Local Government wrote to Local Government New Zealand (LGNZ) seeking its cooperation in reminding territorial local authorities of their obligations under the law and of the desirability of enforcement where disputes about access to roads arise. LGNZ also supported the Minister’s suggestion of a review of the relevant legislative provisions.

The Department of Internal Affairs will report to POL in July 2008 on the principles, scope and timing of the review.

**Interim measures**

In summary there are three main issues regarding unformed legal roads and walking access *(pages 4 – 9):*

- territorial authorities should be required to retain unformed legal roads for possible future use by the public;
- territorial authorities should be provided with more powers to manage the use of unformed legal roads;
- consideration be given to stopping or resuming Crown ownership of some unformed roads to facilitate an exchange for alternative access.

Several options covering inappropriate vehicle use, removal of obstructions and guidance on road stopping have been considered as interim proposals pending the outcome of the comprehensive review *(pages 10 – 11).*

It is proposed that officials:

- develop and issue by 30 June 2009 guidelines for territorial local authorities on the administration of unformed legal roads that are aimed at removing possible impediments to their use for walking access, and the legislation and administrative practices on the stopping of unformed legal roads;
- give consideration to the need to provide for territorial authorities to make bylaws restricting the use of motor vehicles on unformed legal roads in the proposed Land Transport Amendment Bill.

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<th>Baseline Implications</th>
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<td>Legislative Implications</td>
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<td>Timing Issues</td>
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<td>Announcement</td>
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Consultation

The Minister for Rural Affairs indicates that the following Ministers have been consulted: Local Government, Transport and Internal Affairs. The Minister indicates that discussion is not required with the government caucuses and is required with other parties represented in Parliament.

Paper prepared by MAF, DIA, LINZ and Transport have been consulted. Local Government New Zealand has also been consulted.

The Minister for Rural Affairs recommends that the Committee:

Background

1 note that in August 2007 the Cabinet Policy Committee directed officials to report on a number of issues concerning unformed local roads and the role of territorial local authorities as part of the walking access policy development [POL Min (07) 18/20];

Comprehensive review

2 note that the Minister of Local Government will be reporting to the Cabinet Policy Committee (POL) in July 2008 on the principles, scope and timing of a proposed comprehensive review of the legislation applying to unformed legal roads;

Interim measures

3 note that there is a need for interim measures to:

3.1 ensure that territorial authorities respond promptly and effectively to complaints about obstructions to walking access on unformed legal roads;

3.2 promote a common understanding of the current legislation and practices applying to the stopping of unformed legal roads;

3.3 clarify the powers of territorial authorities to regulate the inappropriate use of motor vehicles on unformed legal roads;

4 agree that the Ministry of Agriculture and Forestry and the Walking Access Commission once it is established (lead), Land Information New Zealand and the Department of Internal Affairs in consultation with Local Government New Zealand develop and issue by 30 June 2009 guidelines for local government on:

4.1 the administration of unformed legal roads that are aimed at removing possible impediments to their use for walking access;

4.2 the legislation and administrative practices on the stopping of unformed legal roads;
5. agree that officials from the Ministry of Agriculture and Forestry, Department of Internal Affairs and Ministry of Transport, in consultation with the proposed Walking Access Commission, give consideration to the need to provide for territorial authorities to make bylaws restricting the use of motor vehicles on unformed legal roads in the proposed Land Transport Amendment Bill and report back to POL by 31 March 2009.

Bob Macfarlane
for Secretary of the Cabinet

Copies to:
Cabinet Policy Committee
Chief Executive, DPMC
Director PAG, DPMC
PAG Subject Advisor, DPMC
Secretary to the Treasury
Secretary for Transport
Minister for Land Information
Chief Executive, Land Information New Zealand
Minister of Local Government
Secretary for Internal Affairs (Local Government)
Minister for Rural Affairs
Director-General, MAF (Agriculture)
Minister of Conservation
Director-General of Conservation
Chief Parliamentary Counsel
Legislation Coordinator
Walking access – issues in relation to unformed legal roads

Proposal

1. This paper proposes two remedies for concerns about impediments to the use of unformed legal roads for walking access. It proposes that:

   - the Ministry of Agriculture and Forestry (MAF) (lead), the Walking Access Commission once it is established, Land Information New Zealand (LINZ) and the Department of Internal Affairs (DIA) in consultation with Local Government New Zealand (LGNZ) develop and issue by 30 June 2009 guidelines for local government on:
     - the administration of unformed legal roads that are aimed at removing possible impediment to their use for walking access; and
     - the legislation and administrative practices relating to the stopping of unformed legal roads.

   - officials give consideration to the need to clarify the power of territorial authorities to make bylaws restricting the use of motor vehicles on unformed legal roads in the proposed Land Transport Amendment Bill.

Executive Summary

2. This paper reports on concerns about impediments to the use of unformed legal roads for walking access. The concerns were raised by the Walking Access Consultation Panel in its February 2007 report and officials were directed to report to the Committee on these concerns by 30 June 2008.

3. A comprehensive review of the provisions in the Local Government Act 1974 that apply to unformed legal roads is proposed by DIA. My colleague the Minister of Local Government proposes to report to the Committee in July on the scope, principles and timing of this review.

4. There is no need for any legislative change to deal with concern about obstructions to walking access on unformed legal roads before the planned comprehensive review of the applicable legislation, but the concerns could be alleviated by providing guidelines to territorial authorities.
5. There is a need to clarify the bylaw making powers of territorial authorities to restrict inappropriate vehicle access to unformed legal roads. This could be addressed in the proposed Land Transport Amendment Bill.

Background

6. At its meeting on 15 August 2007 the Cabinet Policy Committee:

22 directed MAF, LINZ, the Department of Internal Affairs, DOC and the Ministry of Transport, in consultation with Local Government New Zealand, to report to POL by 30 June 2008 on:

22.1 the proposal that territorial authorities should generally be required to retain unformed legal roads for possible future use by the public;

22.2 the proposal that territorial authorities should be provided with more powers to manage the use of unformed legal roads, provided that this is associated with a duty to keep unformed legal roads clear of obstructions to appropriate uses; and

22.3 the proposal that consideration be given to stopping or resuming Crown ownership of some unformed legal roads to facilitate an exchange for alternative access;

23 noted that any recommendations made in the June 2008 report referred to in paragraph 22 may only provide interim solutions pending the outcome of the Department of Internal Affairs' review of unformed legal roads, which will consider what legislative changes, if any, are desirable for the future ownership, management and use of unformed legal roads;

24 agreed that the establishment unit:

24.1 work with territorial authorities and central government agencies to develop consistent and appropriate policies for managing unformed legal roads for access;

24.2 consider developing national guidelines on the administration of unformed legal roads for access.

(POL Min (07) 18/20)

7. These decisions closely reflected recommendations made by the Walking Access Consultation Panel (Appendix 1). The Panel's recommendations took account of conclusions of the publication Roading Law as it Applies to Unformed Roads\(^1\). These conclusions are attached as Appendix 2.

---

\(^1\) Roading Law as it Applies to Unformed Roads by Brian Hayes (2007).
Review of legislation applying to unformed legal roads

8. A review of the legislation applying to unformed legal roads has been proposed by DIA. The review has its genesis in the Government’s response to a Parliamentary petition by John Wheeler Lockwood, on behalf of the Federated Mountain Clubs of New Zealand (Petition 1999/0019). The petition sought a change to section 344(1) of the Local Government Act 1974 (LGA74) to require that, where a fence is permitted across any road, a cattle stop or swing gate shall be provided. The petition also sought an additional section in the LGA74 to make it mandatory for a council, upon receiving a petition from 20 or more residents of the district, to comply with the new requirement and section 344(2) of the Act (which requires that a swing gate erected across a road be signposted as Public Road).

9. The Local Government and Environment Committee did not support the proposed amendments to the LGA74 on the basis that it considered that the law already covered these issues. It recommended to the Government that the Minister of Local Government work with LGNZ to remind councils of the need to enforce the law (the Committee’s report is attached as Appendix 3). In response to the Committee’s report, the Minister wrote to LGNZ seeking its cooperation in reminding territorial authorities of their obligations under the law and of the desirability of enforcement where disputes about access to roads arise. The Minister also sought LGNZ’s views on a review of the relevant legislative provisions. In response LGNZ supported a review.

10. DIA proposes to report to Cabinet Policy Committee in July 2008 on the principles, scope and timing of the review. The review is expected to be underpinned by several core principles including, for example:
   - acknowledgment of the public interest in preserving a general right of public access to unformed legal roads;
   - the need to consider matters of local, regional and national significance, including circumstances where unformed legal roads intersect protected areas administered by the Department of Conservation; and
   - alignment with the enabling, participative and integrated decision-making framework of the Local Government Act 2002.

11. The recommendations in this paper, to the extent that they result in Government decisions affecting unformed legal roads, should be regarded as interim pending the outcome of the DIA review.

Walking Access Bill

12. On 8 April 2008 the Minister for Rural Affairs introduced to Parliament a Walking Access Bill that provides for the establishment of a Walking Access Commission. This was in accordance with the policy decisions made on Walking Access on 15 August 2007 (POL Min (07) 18/20) and 5 December 2007 (POL Min (07) 27/17). The Bill had its First Reading on 16 April and was referred to the Local Government and Environment Committee for consideration and report by 31 July 2008.
Comment

**issue 1: Retention of unformed legal roads**
The proposal that territorial authorities should generally be required to retain unformed legal roads for possible future use by the public;

13. Unformed legal roads remain as roads vested in the relevant territorial authority until they are stopped or the Crown resumes ownership of the underlying land. When roads are stopped the underlying land remains vested in the relevant territorial authority until a decision is made on how it is to be used or disposed of.

14. A special provision applies to stopping a road along the coast, rivers or around lakes. Section 345 (3) of the LGA74 provides that where such a road is stopped it becomes esplanade reserve. The wording of this provision makes it unclear how it might apply to road that has been affected by erosion of the original water margin. The provision is subject to any relevant rule in a district plan. Such a rule may over-ride the requirement for the establishment of esplanade reserves. An esplanade reserve has a fixed location, and may be revoked only after complying with a complex process in the Reserves Act 1977.

15. Section 323 of the LGA74 provides that the land comprising any unformed road may, by notice by the Minister for Land Information, be declared to be transferred to the Crown and cease to be a road. This power has rarely been used.

16. Under section 342 of the LGA74 roads may be stopped by the relevant territorial authority in accordance with the procedure set out in the tenth schedule to that Act. If the road is in a rural area, the consent of the Minister for Land Information is required. The procedure requires public notification of any proposed stopping and reference of the proposal to the Environment Court in the event of any objection. Case law has shown that a road stoppage is unlikely to succeed if an objector can demonstrate a public need for the road.

17. Alternatively, a road may be stopped by declaration by the Minister for Land Information under section 116 of the Public Works Act 1981. In practice this power is exercised by the Minister only in instances where there is unlikely to be any objection by the public.

18. Unformed legal roads are strongly protected under current statutory procedures and practices. Any proposed stopping likely to attract objection will generally be subject to the very prescriptive procedures under the tenth schedule of the LGA74, and the Environment Court has shown that it will not agree to stopping a road in the face of an objection from the public that establishes a public use for the road.

19. There are three matters that require consideration:
whether the process under the tenth schedule of the LGA74 is adequate to
meet concerns about the retention of roads for possible future use by the
public;  
the exercise of the discretionary powers of the Minister for Land Information
under the Public Works Act 1981 (in practice delegated to LINZ); and
the efficiency and effectiveness of the very prescriptive processes in the
tenth schedule of the LGA74 (including what might be claimed to be
unnecessarily high transaction costs).

20. The criteria adopted by the Environment Court in considering road-stopping
proposals seem to deal with any specific current or potential use of an
unformed legal road. It is not clear whether they extend to some as yet
unspecified future public use, which is what the Walking Access Consultation
Panel seemed to have in mind in addition to currently identified uses. In the
absence of any specific current or potential use there may be no objection to
the stopping, and even if there were it is unclear if the stopping would succeed.

21. LINZ advises that any road stoppage in a rural area proposed by a territorial
authority under section 116 of the Public Works Act 1981 that is likely to result
in an objection from the public is unlikely to be consented to, and will therefore
need to be dealt with under the tenth schedule process of the LGA74.

22. The potential use of the power of the Crown to resume ownership of the land
comprising an unformed legal road is discussed below under the heading
exchange of road for alternative access.

23. Some territorial authorities have expressed concern about the process for
stopping roads under the tenth schedule of the LGA74. These concerns seem
to be a mix of frustration with the ‘public use’ test that the courts have used in
determining road stoppages, and concern with the cost and inflexibility of the
process. The issues surrounding the retention of unformed legal roads and the
criteria and processes for stopping them are matters that will need to be
explored in depth in the DIA review.

24. The conclusion is that there appears to be little short-term risk of unformed
legal roads with potential value to the public being stopped given the current
practices of LINZ in exercising the discretionary powers of the Minister for Land
Information and the Environment Court precedents. The issues of long term
retention in the public interest should be left to the proposed wider review of the
legislation applying to unformed legal roads.

**Issue 2: Management of unformed legal roads**

The proposal that territorial authorities should be provided with more powers to
manage the use of unformed legal roads, provided that this is associated with a duty
to keep unformed legal roads clear of obstructions to appropriate uses.

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1 Recommendation 9 of Outdoor Walking Access: report to the Minister for Rural Affairs, Walking Access
Consultation Panel (2007).
2 See, for example, Ruapehu District Council, Decision No. A83/2002 of the Environment Court, 23 April 2002
25. Territorial authorities have expressed concerns about the use and management of unformed legal roads. They are particularly concerned about the inappropriate use of these roads by motor vehicles. Although there are powers under the LGA74 to regulate the use of roads there is no general power to stop the use of motor vehicles. There is a bylaw making power under section 72 of the Transport Act 1962 that at least one authority has used to ban the use of motor vehicles on particular unformed roads, but the use of this power for this purpose is questionable.

26. Unformed legal roads are generally unfenced longitudinally and are frequently incorporated into the adjoining farmland. This has been a long-accepted practice, and there is no suggestion that this should change. There is provision in the LGA74 for landholders, with the approval of the territorial authority, to place cattle stops or swing-gates across unfenced unformed legal roads for stock retention purposes, and for such a gate to have a public road sign. This provision implicitly acknowledges the use of the unformed legal road by the land owner for grazing stock. However, public access along these roads is often blocked by fences or other obstructions.

27. Obstructions only become an issue where there is public demand for access. Some territorial authorities seem reluctant to respond to complaints from those seeking access. Only the responsible territorial authority has the power to direct adjoining landowners to remove obstructions to access such as fences or locked gates. In instances where only walking access is required, a stile may be all that is needed in practice.

28. One of the proposed functions of the proposed Walking Access Commission is making information available to the public about walking access opportunities. This could include making the location of unformed legal roads more accessible to the public. This has been opposed by some territorial authorities on the grounds that many unformed roads are unsuitable for use by the public, and better public knowledge of their location will encourage inappropriate use, especially by four wheel drive vehicles.

Regulation of vehicle access

29. LGNZ has suggested that concerns about the management of unformed legal roads might be met by converting the roads to reserves under the Reserves Act 1977. This can be done under the law at present, provided that the road is first stopped. Section 345 of the LGA74 provides several options for the use of land no longer required for road. These include any purpose to which the council may apply land under any enactment. Water margin roads that are stopped become esplanade reserve unless there is provision in a district plan to the contrary.

30. The most immediate concern of territorial authorities is the inappropriate use of vehicles on unformed legal roads, and especially the potential increased use if their location becomes more widely known to the public. The extent to which territorial authorities may regulate the use of unformed legal roads by vehicles...
is unclear. One territorial authority, the Dunedin City Council, has made bylaws under the bylaw making powers in section 72 of the Transport Act 1962 to stop the use of some specific unformed legal roads near the city that were being damaged by four wheel drive vehicle use. The validity of using these powers in this way is unclear, but in any case this section is to be repealed from 1 July 2009 by section 214(3) of the Land Transport Act 1998.

31. The Land Transport Act 1998 provides for the making of rules by the Minister of Transport in respect of the use of roads. For example, section 157 provides under paragraph (a) that a rule “…may empower road controlling authorities to control, restrict, and prohibit traffic and to close roads in specified circumstances or on specified occasions, in accordance with the rules”. This provision may give sufficient authority for a rule empowering territorial authorities to restrict the use of specific unformed legal roads by vehicles where such use is likely to cause unacceptable environmental damage. In the view of the Ministry of Transport, these rule making provisions do not provide a suitable basis for clarifying or extending the powers of territorial authorities to regulate the inappropriate use of vehicles on unformed legal roads.

32. Roading Law suggested a new explicit bylaw making power to enable territorial authorities to restrict or ban inappropriate vehicle use of unformed legal roads in exchange for a positive duty to keep them open for lawful uses. This would require a statutory amendment, possibly to the Local Government Act 2002.

Obstructions on roads

33. One of the changes sought in the Federated Mountain Clubs Parliamentary petition appears to have been based on a misinterpretation of section 344 of LGA74. It is already unlawful to fence across an unformed legal road. Section 344 provides for the placement of swing gates or cattle stops across unformed legal roads where they are not fenced. In this context this clearly means fenced longitudinally. The provision is for stock control purposes. The law in this respect is already adequate.

34. The second change sought by the petition was not responded to specifically. This was the request for a provision making it mandatory, on receiving a petition from 20 or more residents in the district, for a council to comply with section 344 of the LGA74. This would be a revival of a similar provision that was once in the Public Works Act 1981 and would parallel a provision in section 344 for the removal of cattle stops or swing gates that have been lawfully placed across a road with the authority of the relevant council.

35. Some territorial authorities appear reluctant to exercise their powers to ensure that unformed legal roads are kept clear of obstructions to access. If a territorial authority does not respond to complaints of obstruction (or gives them a “not a priority” category) there is little the public can do to remedy the situation. It is not advisable for the public to take the law into their own hands (e.g. cut

*Roading law as it applies to unformed roads, Brian Hayes (2007).*
fences), as this could amount to unlawful damage to property. Seeking an order in the High Court to require a territorial authority to exercise its powers would be prolonged and prohibitively expensive.

35. Two other options include:
   - a new legislative provision for the public to seek in the District Court an order requiring a territorial authority to remove an obstruction across an unformed legal road for the purposes of enabling walking access; or
   - a provision of the kind proposed in the petition of the Federated Mountain Clubs.

37. The Walking Access Consultation Panel recommended that territorial authorities be provided with more powers to manage the use of unformed legal roads, provided that this is associated with a duty to keep unformed legal roads open to appropriate uses.

38. A useful approach that could be pursued now and does not require legislative amendment is for the Government and LGNZ to provide good practice guidelines on how territorial authorities should respond to complaints about the blocking of unformed legal roads. These guidelines could be used to clear up any uncertainty that territorial authorities may have about unformed legal roads, especially the right of the public to pass and re-pass on them. The guidelines could also extend to clarifying the law on road stopping by reference to relevant legislation, case law and administrative practices. LGNZ has indicated its support for the development of the guidelines.

**Issue 3: Exchange for alternative access**

*the proposal that consideration be given to stopping or resuming Crown ownership of some unformed legal roads to facilitate an exchange for alternative access*

39. During the Walking Access Consultation Panel’s consultation with stakeholders, it was frequently suggested that unformed legal roads that are not located in places useful or practical for access should be swapped for roads in more useful locations. Many submitters to the Panel were strongly of the view that any “exchange” of this kind should be a “like for like” swap, on the grounds that any other form of access would be inferior in scope, certainty and permanence. However, research by Hayes notes that a literal road swap is not a practical proposition (Appendix 2).

40. Moreover, such a literal swap would import with it the issue of the potential inappropriate use of the access by motor vehicles and the inflexibility of roads in the case of water margin access.

41. There are more appropriate legal forms of alternative access for walking. These include esplanade strips, access strips and non-statutory easements. These forms of access lack the inherent long term security of roads, although their permanence can be enhanced by provisions in the instrument creating them.
42. More importantly, the issue is whether under the existing legal regime there is scope for stopping roads in exchange for alternative access. There is one case of such a process, that in the “Bushey Park Road” case where a road was stopped in exchange for a more appropriate esplanade strip and adjustments to a related coastal unformed road.

43. The negotiation and formalisation of the “Bushey Park Road” solution has been described as arduous and time consuming. Nevertheless, any solution to an access problem that involves stopping an unformed legal road in exchange for alternative access is likely to be difficult in that it will require agreement with at least one landowner, support from the public, the co-operation of the local authority and probably authorisation by the Environment Court. The Government has ruled out the imposition of solutions that impinge on private property rights.

44. There seems to be no strong case for legislative change to facilitate the exchange of unformed legal road for alternative access. Some of the legal provisions that need to be complied with are complex, but this is a reflection of the history and complexity of the relevant law, especially that related to reservations along water margins. Given the complexity of the law and the need to negotiate and obtain agreement to any new access over private land, such “exchanges” will need to be negotiated on a case-by-case basis.

Conclusion

45. The principal matter is the underlying nature of unformed legal roads. They are public land to which important public rights are attached.

46. The present safeguards concerning the stopping of unformed legal roads appear to be adequate in the short term to protect them for possible future public use, as recommended by the Walking Access Consultation Panel. The concerns of local government about the procedures for stopping unformed legal roads under the LGA74 would need to be the subject of a wider ranging review. Such a review would need to involve public consultation and could be very controversial and complex.

47. The concerns of access users about the blocking of unformed legal roads and the concerns of territorial authorities on the inappropriate vehicle use of unformed legal roads need to be addressed more urgently. Irrespective of the establishment of the Walking Access Commission and its function of providing information about walking access, the location of unformed legal roads is already public and is becoming more readily accessible to the public with the rapid development of GIS technology. There will be continuing tension between the public, landowners and local authorities if there is no clarification of the obligation of territorial authorities to keep unformed legal roads clear of obstructions, and a lack of clarity in the power of territorial authorities to regulate inappropriate vehicle use.

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1 Environment Court Decision No. C 100/2005.
48. Given the protection given from the unjustifiable stopping of unformed legal roads and the need to negotiate any new access over private land, the exchange of unformed legal road for more appropriate access is inherently difficult. There is, however, no clear need for legislative change.

49. There is clearly a case for a comprehensive review of the provisions in the LGA74 as they apply to unformed legal roads. The legislation needs to be updated in the context of the Local Government Act 2002 and the Land Transport Act 1998.

50. The terms of reference for the review are expected to include consideration of the long term retention of unformed roads for future use, including the use of unformed legal roads for walking access and other recreational purposes, and whether the current public interest test is adequate for these purposes. It is also likely to consider the need for such a prescriptive approach to road stopping as in the tenth schedule of LGA74.

**Interim solution**

51. Until the review is completed, there is a need for an interim solution to the concerns of territorial authorities on the management of unformed legal roads, especially their concern that measures to better identify their location for walking access purposes may exacerbate the problem of unregulated vehicle access.

52. A comprehensive review of the provisions in the LGA74 relating to unformed legal roads is likely to be very controversial, complex and lengthy. Moreover, it is difficult to see how such a review could be satisfactorily undertaken without looking at the entirety of Part 21 of that Act and the underlying common law rights attaching to roads, as in general no distinction is made between formed and unformed roads.

53. There is also an immediate need to address the concern that territorial authorities are often reluctant to deal with obstructions on unformed legal roads, and the related concern that making unformed legal roads more readily available for public access will create problems with inappropriate use by vehicles.

54. There is also some concern that not all territorial authorities have a clear understanding of the criteria adopted by the Environment Court in respect of road stopping. There is scope for MAF, in conjunction with the proposed Walking Access Commission, LINZ, DIA and LGNZ to compile guidance material that would clarify these matters.

55. Options for an interim solution include:
   - in respect of regulating inappropriate vehicle use:
     - clarification, and if necessary revision, of the bylaw making powers of territorial authorities so that they able to restrict or prohibit traffic on
unformed legal roads where this is necessary to prevent damage to the environment; and

- in respect of obstructions:
  - a statutory requirement for a territorial authority to comply with a public petition to remove an obstruction on an unformed legal road; or
  - a provision to seek an order in a District Court requiring the removal of an obstruction to walking access on an unformed legal road; or
  - guidance to territorial authorities as to their obligations under LGA74. This could be compiled jointly by the Walking Access Commission, officials and LGNZ; and

- in respect of road stopping:
  - guidance to territorial authorities summarising the case law in respect of opposed stoppings and information on the practices of LINZ in the exercise of the Minister's road stopping discretions and powers.

Evaluation of options

Vehicle use

56. In terms of regulating vehicle use, if this is to be done by local authority bylaws a new or clarified bylaw making power seems to be necessary as existing provisions for making bylaws are too uncertain to be relied on.

57. The use of the bylaw making powers in the Land Transport Act 1962 to prohibit the use of vehicles on specific unformed legal roads, as has been done by one council, is of uncertain validity and in any case that Act is to be repealed.

58. Although the Transport Act 1962 is going to be repealed, Cabinet has agreed that the bylaw making provisions in that Act, as well as those contained in the LGA74, will be consolidated and transferred into the Land Transport Act 1998 (EDC Min (07) 26/9). Cabinet also agreed:

- to rationalise and amalgamate the bylaw-making powers in the Transport Act 1962 and LGA74 into thematically related groups, and to phrase these powers in more general terms to give road controlling authorities greater flexibility to deal with unforeseen problems; and
- that road-controlling authorities should have a general bylaw-making power on the use of roads.

59. A Land Transport Amendment Bill is on the 2008 legislation programme. It will need to be enacted before 1 July 2009. The consolidation of the bylaw making powers in respect of roads presents the opportunity to clarify the scope to make bylaws restricting the inappropriate use of motor vehicles on unformed legal roads.
Obstructions

60. In respect of the removal of obstructions, neither DIA nor MOT supports interim solutions that would require legislation. Territorial authorities already have the power to ensure that unformed legal roads are kept clear of obstructions such as fences and locked gates. The real issue is the exercise of these powers in appropriate circumstances.

61. This leaves the use of voluntary compliance guidelines. To be effective these would require widespread acceptance by territorial authorities.

Consultation

62. The issues under consideration emerged from the extensive consultation carried out by the Walking Access Consultation Panel in 2006. The Department of Internal Affairs and Land Information New Zealand, the Ministry of Transport and Local Government New Zealand have been consulted and their views have been reflected in this paper.

Financial Implications

63. The recommendations in this paper have no financial implications.

Legislative implications

64. No new legislation is proposed in this paper.

Regulatory impact analysis

65. No new regulatory powers are proposed.

Publicity

66. No publicity is proposed at this stage

Recommendations

67. I recommend that the Committee;

1. note that the Minister of Local Government will reporting to the Cabinet Policy Committee in July 2008 on the principles, scope and timing of a proposed comprehensive review of the legislation applying to unformed legal roads;

2. note that there is need for interim measures to:

   2.1. ensure that territorial authorities respond promptly and effectively to complaints about obstructions to walking access on unformed legal roads;
2.2. promote a common understanding of the current legislation and practices applying to the stopping of unformed legal roads; and

2.3. clarify the powers of territorial authorities to regulate the inappropriate use of motor vehicles on unformed legal roads;

3. agree that MAF, and the Walking Access Commission once it is established (lead), Land Information New Zealand (LINZ) and the Department of Internal Affairs (DIA) in consultation with Local Government New Zealand (LGNZ) develop and issue by 30 June 2009 guidelines for local government on:

3.1 the administration of unformed legal roads that are aimed at removing possible impediments to their use for walking access; and

3.2 the legislation and administrative practices on the stopping of unformed legal roads;

4. agree that officials (MAF; DIA; MOT), in consultation with the proposed Walking Access Commission, give consideration to the need to provide for territorial authorities to make bylaws restricting the use of motor vehicles on unformed legal roads in the proposed Land Transport Amendment Bill and report back to POL by 31 March 2009.

Hon Damien O’Connor
Minister for Rural Affairs
26.6.08
Appendix 1: Recommendations of the Walking Access Consultation Panel in respect of unformed legal roads

7. Te Ara o Papatuanuku works with territorial authorities to develop consistent and appropriate policies for managing unformed legal roads for access;

8. the mapping of unformed legal roads be a priority for Te Ara o Papatuanuku;

9. territorial authorities generally be required to retain unformed legal roads for possible future use by the public;

10. an effective legislative remedy be available to the public (and enforceable in the District Court) for the removal of unlawful obstructions on unformed legal roads;

11. territorial authorities be provided with more powers to manage the use of unformed legal roads, provided that this is associated with a duty to keep unformed legal roads open to appropriate uses;

12. Te Ara o Papatuanuku considers developing national guidelines on the administration of unformed legal roads;

13. consideration be given to assessing whether it may still be possible to stop some unformed legal roads in exchange for alternative access (this could involve more procedural flexibility and Te Ara o Papatuanuku’s participation in the promotion of alternative access arrangements that are in the public interest);

14. consideration be given to the use of the Crown’s power to resume ownership of the land comprising unformed legal roads to facilitate an exchange for alternative access.
Appendix 2: Roading Law as it Applies to Unformed Roads

Brian Hayes, 2007

Considering reform

- Suggested statutory framework for bylaws
- Exchange for other forms of public access
- Observations

A constant call on matters of public access is for local solutions to be applied in preference to centralised authority. A highly prescriptive statutory solution to the uncertainties affecting unformed roads – rights, control, obstructions, and occupiers' peaceable use – is unlikely to be popular with either adjoining landowners or recreational users and may not be legally warranted.

Territorial bylaws may therefore be the most appropriate way of:

- regulating good order on an unformed road intersecting private property;
- preventing damage to the surface of the road and any structures on it;
- making sure that people exercising a right of passage do not unreasonably interfere with the occupier's use of the land.

Unformed roads across land or along water boundaries could be subject to management and control through bylaws, to ensure that rights of passage are preserved, obstructions are removed, and dangers which have been artificially created are dealt with.

Given the special character of unformed roads – where public land subject to public rights is almost always occupied by private persons – a statutory framework providing for specific bylaws seems more appropriate in the interests of councils, adjoining landowners, and recreational users. The general power to make bylaws (s 146 Local Government Act 2002) may be inadequate for the purpose.

Suggested statutory framework for bylaws

A definition of "unformed road" may be a first requirement. The term could be defined as:

- any road originally laid out over Crown land and marked on the ground and record maps; or
- any road originally laid out on Crown land under the authority of any Act or Ordinance, on any Crown grant record map, but not marked or laid out on the ground;

where the road has not been constructed by any of gravelling, metalling, sealing, or permanently surfacing the road, and is neither substantially formed or made for the use of the public.
It should be the duty of the territorial local authority to enact and enforce bylaws in relation to unformed roads in order to:

- preserve order¹ and rights of passage;²
- prevent damage to the surface land comprising the road or anything on it;³ and
- ensure that persons exercising the right of passage over any unformed road so behave themselves as to avoid undue interference with the enjoyment of the land comprising the road by other persons and occupiers.⁴

Bylaws may relate to all unformed roads in the district or any particular such roads.

Bylaws should not interfere with:

- the exercise of any public right of way;⁵ and
- any authority having under any enactment functions relating to the unformed road to which the bylaws apply.⁶

Exchange for other forms of public access

There are formidable if not insurmountable difficulties in exchanging unformed road for a new unformed road in the same vicinity. The whole network of unformed roads is predicated on the laying out of unformed roads on Crown land whether pegged on the ground or laid out as paper roads. It is not possible to lay out unformed roads in a state of nature over private land; since the enactment of the Public Works Amendment Act 1900 it has been unlawful for the owner to do so when land is subdivided. The Public Works Amendment Act required all new roads to either be formed (in rural areas) or formed and metalled (in boroughs and in proximity to boroughs). Over the last 100 years standards of formation have been progressively increased. A private owner cannot dedicate road without the acceptance of the council. Councils do not accept the dedication of roads which are unformed.

Since 1 April 1979,⁷ the Crown has been bound by the subdivisional law applying to all landowners, and must provide new roads complying with the requirements for formation of the relevant territorial local authority. New unformed legal roads are no longer laid out on Crown land.

There is, however, a mechanism which in appropriate circumstances would help enable the exchange of an unformed road for an alternative form of public access. The exercise of this option would require the co-operation of the adjoining landowner, the Minister of Lands on behalf of the Crown (in practice, Land Information New Zealand), and the territorial local authority. The process is put forward here as a possibility for consideration.

¹ The Minister of Lands resumes as Crown land a section of unformed road under s 323 of the Local Government Act 1974. Any such resumption for the purposes of effecting an exchange would prudently be executed on the basis of an agreed policy statement. The former road when transferred by the council to the Crown acquires the status of Crown land subject to the Land Act 1948 and becomes available for disposal by the Crown.
2 The territorial local authority negotiates an access strip (s 237B Resource Management Act 1991) along another route, to be secured by an easement made between the registered proprietor of the land adjoining the former road and the local authority, to be registered under the Land Transfer Act 1952 against the title to the land.

3 When the easement is registered under the Land Transfer Act, the Crown vests the former road in the adjoining owner under the provisions of s 116 of the Land Act 1948.

This result may be achieved under existing legislation. A point to watch, however, is the taking of security over the former road by anyone required to consent to granting an easement under s 237B of the Resource Management Act 1991. That is, if there is a mortgage of the land over which the easement is granted, the mortgagee in giving the required consent should insist on the execution and registration of a fresh mortgage over the new land (the former road). If a new mortgage is not taken, the powers of the mortgagee over the whole of the property would be diminished.

Observations

Section 146 of the Local Government Act 2002 probably does not authorise the bylaw framework suggested to provide comprehensive but non-prescriptive management and control over unformed roads. New legislation may be required to authorise a complete set of powers.

The proposal for a change in route as indicated above could be implemented under existing statutory authority. If, however, it were to be authorised under amended statutory procedures, it would be desirable to compulsorily amalgamate the former road with the land in the title of the adjoining owner, with all interests on that title automatically spreading to the new land. Given that a road is being exchanged for something less in terms of public rights, there is a case for amending legislation which could make the terms of the easement conditional on the approval of the Minister of Lands, and any surrender thereof subject to Ministerial approval.

1 No boy racers, etc.

2 No forestry companies planting trees on roads; no artificial obstructions.

3 For the protection of the surface rather than the express prohibition of classes of vehicles. Protection of utilities such as water and sewage pipes when owned by the council, etc.

4 Adjoining landowners' occupancy to be respected.

5 The right of passage must always be preserved.

6 Utilities rights respected; Telecom, electricity supply, etc.

Appendix 3: Petition 1999/0019 of John Lockwood Wheeler, on behalf of the Federated Mountain Clubs of New Zealand

Report of the Local Government and Environment Committee

The Local Government and Environment Committee has considered Petition 1999/0019 of John Lockwood Wheeler, on behalf of the Federated Mountain Clubs of New Zealand, which requests that the House of Representatives make various amendments to the Local Government Act 1974.

The petition seeks to change section 344(1) of the Local Government Act 1974 to require that, where a fence is permitted across any road, a cattle stop or swing gate shall be provided (and that the minimum width of such shall be 3 metres). It also seeks an additional section in the Act to make it mandatory for a council, upon receiving a petition from 20 or more residents of the district, to comply with the new requirement and section 344(2) of the Act. The petition further seeks to have all unauthorised fences across roads removed or made to comply with the Act.

We do not support the proposed amendments to the Act because we consider that the law already adequately covers these issues. However, we acknowledge that the law in these areas is sometimes not complied with or enforced. We consider the issues are important and believe work should be done to ensure local authorities meet their obligations under the law.

We recommend to the Government that the Minister of Local Government work with Local Government New Zealand to remind councils of the need to enforce the law, where issues arise, such as those raised by the petitioner.

Jeanette Fitzsimons
Chairperson
CONSULTATION ON CABINET AND CABINET COMMITTEE SUBMISSIONS

CERTIFICATION BY DEPARTMENT

Guidance on the consultation requirements for Cabinet and Cabinet committee papers is provided in the Procedures: Consultation section of the CabGuide website at http://www.cabguide.cabinetoffice.govt.nz/procedures/consultation

Departments/agencies consulted: The attached submission has implications for the following departments/agencies whose views have been sought and are accurately reflected in the submission:

- Internal Affairs
- LINZ
- Transport
- Local Government
- New Zealand

Departments/agencies informed: In addition, the following departments/agencies have an interest in the submission and have been informed:

Others consulted: Other interested groups have been consulted as follows:

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<td>Mark, National Policy Analyst, 25/06/08</td>
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CERTIFICATION BY MINISTER

Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet committee. The attached proposal:

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<td>does not need discussion with the government caucuses</td>
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<td>will be discussed with the following other parties represented in Parliament:</td>
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RELEASED UNDER THE OFFICIAL INFORMATION ACT
Walking Access: Unformed Legal Roads

Portfolio: Rural Affairs

On 2 July 2008, the Cabinet Policy Committee (POL):

Background

1 noted that in August 2007, POL directed officials to report on a number of issues concerning unformed legal roads and the role of territorial local authorities as part of the walking access policy development [POL Min (07) 18/20];

Comprehensive review

2 noted that the Minister of Local Government will be reporting to POL in July 2008 on the principles, scope and timing of a proposed comprehensive review of the legislation applying to unformed legal roads;

Interim measures

3 noted that there is a need for interim measures to:

3.1 ensure that territorial authorities respond promptly and effectively to complaints about obstructions to walking access on unformed legal roads;

3.2 promote a common understanding of the current legislation and practices applying to the stopping of unformed legal roads;

3.3 clarify the powers of territorial authorities to regulate the inappropriate use of motor vehicles on unformed legal roads;

4 directed the Ministry of Agriculture and Forestry, in consultation with other relevant agencies, to report to POL by 3 September 2008 on proposed interim measures to address the issues set out in paragraph 3;
5 **agreed** that the Ministry of Agriculture and Forestry and the Walking Access Commission once it is established (lead), Land Information New Zealand and the Department of Internal Affairs, in consultation with Local Government New Zealand, develop and issue by 30 June 2009 guidelines for local government on:

5.1 the administration of unformed legal roads that are aimed at removing possible impediments to their use for walking access;

5.2 the legislation and administrative practices on the stopping of unformed legal roads;

6 **agreed** that the Ministry of Agriculture and Forestry, Department of Internal Affairs and Ministry of Transport, in consultation with the proposed Walking Access Commission, give consideration to the need to enable territorial authorities to make bylaws restricting the use of motor vehicles on unformed legal roads in the proposed Land Transport Amendment Bill, and report back to POL by 31 March 2009.

Janine Harvey
Secretary

Reference: POL (08) 172

Present:
- Rt Hon Helen Clark (Chair)
- Hon Dr Michael Cullen
- Hon Jim Anderton
- Hon Phil Goff
- Hon Pete Hodgson
- Hon Parekura Horomia
- Hon Chris Carter
- Hon Trevor Mallard
- Hon David Parker
- Hon Maryan Street
- Hon Shane Jones

Consult for:
- Chief Policy Committee
- Chief Executive, DPoMC
- Director PAER, DPoMC
- PAG Subject Advisor, DPoMC
- Secretary to the Treasury
- Secretary for Transport
- Minister for Land Information
- Chief Executive, Land Information New Zealand
- Minister of Local Government
- Secretary for Internal Affairs (Local Government)
- Minister for Rural Affairs
- Director-General, MAF (Rural Affairs)
- Minister of Conservation
- Director-General of Conservation
- Chief Parliamentary Counsel
- Legislation Coordinator

Ofﬁcial present from:
- Ofﬁce of the Prime Minister
- Department of the Prime Minister and Cabinet
Local Government Briefing

Subject: PROPOSED REVIEW OF LEGISLATION RELATING TO THE MANAGEMENT OF UNIFORMED ROADS

Date: 15 June 2005

Attention: Hon Chris Carter
(Minister of Local Government)

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<td>Sign the attached letters referring a copy of this report to the Associate Minister of Rural Affairs and the Ministers of Transport, Land Information, and Māori Affairs seeking their comment on the proposed process for undertaking a review of unformed roads legislation.</td>
<td>No particular deadline.</td>
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Contact for telephone discussion (if required)

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<th>Name</th>
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<tr>
<td>John Sutton</td>
<td>Senior Policy Analyst</td>
<td>[Redacted]</td>
<td>1</td>
</tr>
<tr>
<td>Warren George</td>
<td>Senior Policy Analyst</td>
<td>[Redacted]</td>
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Witheld under section 9(2)(a) of the Official Information Act 1982
Purpose of Report

1. This report outlines a proposed process for undertaking a review of the legislation relating to the administration of unformed roads. It is proposed that you refer copies of this report to the Associate Minister for Rural Affairs and the Ministers of Transport, Land Information, and Māori Affairs seeking their comment on the proposed process, and nominees from their departments to participate in the review. Following consultation with your colleagues, it is proposed that officials work with Local Government New Zealand (LGNZ) to develop terms of reference for the review for which Cabinet approval would be sought.

Background Information

2. In December 2004, you wrote to the president of LGNZ concerning a select committee report on a petition seeking additional legal obligations for local authorities to ensure public access to legal roads. The Local Government and Environment Committee’s report concluded that the existing legislation was adequate but invited you, as Minister of Local Government, to work with LGNZ to remind local authorities of their obligations in this respect.

3. In response, you wrote to LGNZ’s president drawing his attention to the select committee report. You also sought LGNZ’s views on the desirability of a review of the Local Government Act 1974 (LGA 1974) provisions relating to the administration of unformed roads. Your letter noted that the identification and utilisation of unformed roads are significant aspects of the public walking access strategy being developed by the Government, and that you are aware the identification and administration of unformed roads raise issues of concern to local authorities.

4. The local authority road management provisions in the LGA 1974 do not generally distinguish between formed and unformed roads in conferring powers and obligations on local authorities. These provisions were not included in the review that led to the Local Government Act 2002 because they are to be included in a review of road management legislation in the context of the Land Transport Review led by the Ministry of Transport. We understand that new road management legislation is unlikely before late 2008.

5. After consultation with member local authorities, the president of LGNZ responded to your letter supporting a review of legislation relating to unformed roads. The letter noted that many local authorities find the existing legislation relating to unformed legal roads to be inadequate. The president referred to the difficulty and cost of local authorities regulating or prohibiting vehicular use of such roads despite the fact that many are in sensitive ecological areas, may contain heritage sites, and were never intended for motorised vehicular access.

6. LGNZ believes the review should give particular attention to:
   - whether the legislation should differentiate between:
     - formed and unformed roads; and
     - vehicular and non-vehicular access (e.g. walking);
   - how the road stopping provisions for unformed roads can be simplified, made less adversarial, and allow matters to be dealt with locally through a consultative rather than a judicial process; and
how flexibility could be incorporated into the legislation to allow the utilisation of unformed roads to provide alternative access solutions.

7. LGNZ has indicated it would welcome the opportunity to be involved in the review and to work with officials in developing the terms of reference.

8. In the meantime, we have been working with other agencies, led by the Ministry of Agriculture and Forestry (MAF), on a possible interim measure to facilitate walking access to unformed roads for inclusion in the proposed Walking Access Bill. An interim measure was considered desirable to meet expectations arising from public consultation on the walking access policy and pending a comprehensive review of the legislation. Work on the interim provision, for approval by the Associate Minister for Rural Affairs and Ministers of Local Government, Conservation and Transport, was agreed by Cabinet in the context of decisions on the Walking Access Bill [Item 52 of CBC Min (05) 5/14, 23 May 2005, refers].

9. In working on this issue, officials have been concerned to ensure that any measure to facilitate walking access on unformed roads (including signage identifying the road) is accompanied by clear and accessible powers for territorial authorities to regulate vehicular traffic on those roads for public safety, environmental or landholder acceptance reasons. Officials are now questioning whether an interim provision for walking access is justified in light of the complexity and potential controversy of measures required to regulate the use of vehicles. MAF has advised us that it intends to speak to Hon Jim Sutton about this view and options for going forward.

10. One option would be to deal with walking access objectives within the context of the separate and comprehensive review. In seeking Cabinet Legislation Committee agreement to your response to the original select committee report, you indicated that you would consult the Associate Minister for Rural Affairs and the Minister of Transport prior to seeking Cabinet agreement to the terms of reference for such a review.

Comment

11. Unformed roads are numerous in many parts of New Zealand. Prior to 1892, the creation of roads was the primary means for reserving land alongside waterways for public purposes, while other roads were set out in anticipation of settlement and transport needs that never materialised or have since disappeared. While many unformed roads are very valuable for public access, others will have little value or may be unsuitable for public access because of terrain or because they pass through sensitive natural environments.

12. Almost all unformed roads are in rural areas and have existed for many years. Prior to the Counties Amendment Act of 1972, such roads were vested in the Crown but they were transferred at that time to the relevant territorial authorities.

13. Because the road management legislation does not otherwise distinguish between unformed roads and formed roads, there is arguably no legal difference between the two in terms of:

- public rights of access and passage;
the obligations of adjacent landowners in terms of fencing roads, preventing wandering stock, and avoiding obstructing the roads;
the powers of local authorities to regulate traffic, stop roads, and change the purpose for which the land is used.

14. While some unformed roads have been used to provide public access, the historical practice for the great majority has been for both road administering authorities (the Crown and, latterly, territorial authorities) and landowners to ignore their status as roads. Unformed legal roads have often been treated and used in conjunction with adjacent land (usually farmland and lifestyle blocks), in some cases for more than 100 years. In other cases, unformed roads adjacent to or through reserves and the Conservation estate are administered in accordance with the public purposes for which the surrounding land is held. There is thus a significant tension between the formal legal situation, in which the same public rights of unrestricted access apply, and the reality and associated expectations of adjacent landowners.

15. This situation is becoming increasingly untenable as pressure for public access (both walking and vehicular) grows, and public abilities to access and utilise information concerning the existence and location of unformed roads increases. This is generating a tension with the expectations of farmers and other landowners who themselves face pressures in relation to land utilisation. In terms of Government objectives, both the Government's walking access policy and the forthcoming review of road management legislation would benefit from evaluation of the need for a specialised legislative framework for the management of land currently having unformed road status.

16. Such an outcome is likely to require a detailed review of the issue including:
- Better information about the ways in which land was historically set aside for roads;
- Better information concerning the extent of unformed roads in New Zealand, including significant regional differences. Anecdotal evidence suggests that in some districts the ratio of length of unformed roads to formed roads may exceed 4 to 1;
- A detailed assessment of the statutory and common law status of unformed roads, and associated legal rights;
- Assessment of the extent and nature of issues relating to unformed roads adjacent to or through Māori freehold land; and
- Identification of the range of interests and public purposes that might be met by the use of land currently held as unformed roads, and associated expectations.

17. It is anticipated that such a review will require input from the Ministry of Transport, MAF, Department of Conservation, Land Information New Zealand and Te Puni Kokiri. LGNZ has expressed interest in participating in such a review. Input from the local government sector, which has experience with the practical difficulties of unformed roads, would also be invaluable. A range of sector and interest groups, including Federated Farmers, Fish and Game, motorised recreation and walking access groups, will also be closely interested in the issue. As well as direct consultation with such groups, it is likely that more general public consultation, probably involving the publication of a discussion document, would be appropriate.
18. At this stage, it is proposed that you copy this report to your colleagues, the
Associate Minister for Rural Affairs and Ministers of Transport, Land
Information and Māori Affairs, seeking:

(a) agreement to their officials participating in the development of terms of
reference for such a review, for Cabinet consideration; and

(b) any comments that they may wish to make at this stage about the process
or scope for the review.

19. Your agreement to the participation of Department of Conservation officials is
also sought.

Recommendations

20. I recommend that you:

(a) note the contents of this paper;

(b) agree to the development, for Cabinet approval, of terms of reference for a review of the legislation relating to the
administration of unformed roads;

(c) sign the attached memoranda to the Associate Minister for Rural Affairs and Ministers of Transport, Land Information
and Māori Affairs, seeking:

i. agreement to their officials participating in the
development of terms of reference for such a review,
for Cabinet consideration; and

ii. any comments that they may wish to make at this
stage about the process or scope for the review;

(d) agree to the participation of Department of Conservation officials in the development of terms of reference; and

(e) agree that officials may involve Local Government New Zealand in the development of terms of reference.

John Sutton
Senior Policy Analyst

MINISTER’S SIGNATURE:

DATE:
RELEASED UNDER THE OFFICIAL INFORMATION ACT
Local Government Briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: An Integrated Approach to the Review of Unformed Legal Roads and Walking Access Policy: Ministers' Meeting on Tuesday 13 May 2008 at 6.45pm

Date: 7 May 2008

Key issues

- You are meeting with the Minister for Rural Affairs, the Minister for Land Information and the Minister of Transport on 13 May 2008 to discuss an integrated approach to the review of unformed legal roads and walking access policy;
- A walking access POL report, focused on issues related to unformed legal roads, is due by the end of June 2008. This work is being undertaken by an inter-departmental working group, in consultation with LCNZ. Initial work suggests that this report is unlikely to constrain a broader review of unformed legal roads;
- The Department proposes that the Cabinet paper, Principles Underpinning the Review of Unformed Legal Roads, be considered by POL in July 2008. This Cabinet paper could be signalled in the June 2008 walking access report, which would provide a clear link between the two papers.

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<tr>
<td>Antony Moss</td>
<td>Manager (Regulatory Policy)</td>
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<tr>
<td>Paula Gunn</td>
<td>Policy Analyst</td>
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Withheld under section 9(2)(a) of the Official Information Act 1982
Purpose of briefing

1. This briefing updates you on the context and purpose of your meeting with the Minister for Rural Affairs, the Minister for Land Information, and the Minister of Transport on 13 May 2008. The outcome sought from the meeting is agreement to coordinate the proposed review of unformed legal roads and the June 2008 walking access report.

Background information

Links with between Unformed Legal Roads and Walking Access

2. The Government’s response to the Walking Access Consultation Panel has included decisions related to unformed legal roads. On 20 August 2007, Cabinet:

   22 directed MAF, the Department of Internal Affairs, DOC and the Ministry of Transport, in consultation with Local Government New Zealand, to report to POL by 30 June 2008 on:

   22.1 the proposal that territorial authorities should generally be required to retain unformed legal roads for possible future use by the public;

   22.2 the proposal that territorial authorities should be provided with more powers to manage the use of unformed legal roads provided that this is associated with a duty to keep them clear of obstructions to appropriate uses;

   22.3 the proposal that consideration be given to stopping or resuming Crown ownership of some unformed legal roads to facilitate an exchange for alternative access;

   23 noted that any recommendations made in the June 2008 report referred to in paragraph 22 may only provide interim solutions pending the outcome of the Department of Internal Affairs’ review of unformed legal roads, which will consider what legislative changes, if any, are desirable for the future ownership, management and use of unformed legal roads;

   24 agreed that the [new walking access agency’s] establishment unit:

   24.1 work with territorial authorities and central government agencies to develop consistent and appropriate policies for managing unformed legal roads for access;

   24.2 consider developing national guidelines on the administration of unformed legal roads for access [CAB Min (07) 30/5 and POL Min (07) 18/20 refer];

3. In late 2007, the Department of Internal Affairs (the Department) started preliminary work on a broader review of unformed legal roads, and prepared a draft Cabinet paper seeking agreement to the review’s purpose and principles. The Department consulted widely on this paper, but was unable to reach agreement with the Ministry of Agriculture and Forestry (MAF) on how to progress with the review. MAF considered that starting the review would be premature before the outcome of the June 2008 Cabinet Policy Committee (POL) report was known, and would be perceived as a threat to walking access stakeholders.

Local Government New Zealand’s Concerns

4. At the Central and Local Government Forum in December 2007, Local Government New Zealand (LGNZ) reiterated that a review of unformed legal roads should be undertaken as a priority. LGNZ noted that:

   a. the outcomes of the walking access policy work have the potential to impose significant costs on local communities if local authorities do not have the tools to manage the land properly; and
b. the outcomes of the walking access policy work may lead to decisions that will pre-empt and constrain the Department's review.

Previous Advice

5. The Department briefed you on 21 December 2007, and outlined:
   - LGNZ's and the Department's concerns that walking access policy decisions could constrain the scope of a broader review unless a broader review was started before June 2008; and
   - the lack of agreement with MAF on how to progress the review.

6. The Department proposed that you convene a meeting with Ministers who have an interest in uniformed legal roads. The meeting was intended to provide an opportunity for Ministers to discuss the issues associated with uniformed legal roads and walking access, and how the two streams of work should proceed.

Comment

7. Work has now started on the walking access POL report. MAF's preliminary analysis indicates that the outcome of this work is unlikely to constrain a broader review of uniformed legal roads. The Department considers there is now an opportunity to leverage off the momentum of the walking access policy work and progress a broad review of uniformed legal roads (subject to prioritisation within the local government policy work programme).

Purpose and Principles of the Review

8. The Department anticipates that a broad review could consider what legislative changes, if any, are desirable for the future ownership, management and use of uniformed legal roads. The draft principles developed by the Department to underpin the review are attached to this briefing as Appendix 1.

Ministers' Meeting

9. The Department considers that the meeting will be useful to ensure that Ministers are aware of the concerns of the local government sector. It will also allow discussion of the range of issues, including but not limited to walking access, that could be considered by a review of uniformed legal roads.

10. Given the timing of the meeting in relation to the June 2008 POL report, the Department now proposes that the Cabinet paper (Principles Underpinning the Review of Unformed Legal Roads) seeking agreement to the purpose, principles and timing of the review, be revised and then considered by POL in July 2008. This Cabinet paper could also be signalled in the June 2008 POL report, which would reinforce the interim nature of any decisions about uniformed legal roads in the context of walking access policy (as noted in POL Min (07) 18/20).

11. The outcome sought from the Ministers' meeting is agreement to this approach to coordinate the two work streams.

12. Some speaking points to assist you at the meeting are attached to this briefing as Appendix 2. Officials are available to brief you further if required.
Recommendation

13. The recommendation is that you note the contents of this briefing.

Antony Moss
Manager (Regulatory Policy)
Local Government and Community Policy Group

Hon Nanaia Mahuta
Minister of Local Government

/ 2008
APPENDIX 1

Proposed Objective of the Review of Unformed Legal Roads

The Department considers the objective of the review could be to consider what legislative changes, if any, are desirable for the future ownership, management and use of unformed legal roads.

Proposed Principles to Underpin the Review of Unformed Legal Roads

The Department has developed five principles to underpin the review:

- a presumption in favour of public access, as close as possible to the general right of free passage provided by the status of legal road, without necessarily retaining that status;
- responsiveness to local issues, meaning that public access rights would not necessarily prevail over other considerations;
- the need to consider matters of regional and national significance, including circumstances where unformed legal roads adjoin protected areas administered by the Department of Conservation;
- safeguarding existing Māori interests and providing opportunities for greater involvement of Māori in the management and kaitiakitanga of land held as unformed legal road; and
- alignment with the enabling, participative and integrated decision-making framework of the Local Government Act 2002.
APPENDIX 2

Talking Points for Meeting with the Minister for Rural Affairs, the Minister of Transport, and the Minister for Land Information

- There are approximately 57,000 kilometres of unformed legal roads in New Zealand. Unformed legal roads are a significant public resource, and the management and use of them is a significant issue for the local government sector.

- Unformed legal roads can contribute to walking access outcomes, but not all unformed legal roads will be useful for this purpose. It is unknown what proportion of the estimated 57,000 kilometres of unformed legal roads would have practical value for walking access or other recreational opportunities.

- There are wider local, regional and national interests and values associated with unformed legal roads. It is important to consider the range of interests and values that might be served by unformed legal roads, and balance these with the costs that might be incurred by territorial authorities in managing them for a range of purposes.

- The local government sector is concerned that the walking access policy process has raised expectations among some recreational users about the use of unformed legal roads.

- The local government sector is particularly concerned about the potential costs that might arise as a result of walking access policy. No robust analysis has been undertaken on the costs and benefits of the retention and use of unformed legal roads for walking access, compared to alternatives.

- There is an opportunity to leverage off the momentum of walking access policy work and progress a broad review of unformed legal roads. The review could consider a range of potential uses and outcomes that could be served by unformed legal roads, and could result in a system for balancing these.
• A possible outcome of the review could be the development of options for distinguishing between formed and unformed legal roads, or between classes of unformed legal road. These distinctions, and any associated powers and obligations, could enable local authorities to plan and manage unformed legal roads more effectively for a range of uses, including walking access.

• A broad review of unformed legal roads could take account of, and provide for walking access outcomes. However, without adequate consideration of the broad range of issues, any proposals concerning unformed legal roads are unlikely to be durable.

• Examples of the range of issues that could be considered in a broad review of unformed legal roads include:
  
  o environmental values;
  o health and safety risks;
  o the actual and potential uses of unformed legal roads by network utilities, and options to address these; and
  o exploring opportunities for greater involvement of Māori in the management and kaitiakitanga of land held as unformed legal road.

• It is also likely that there are unformed legal roads with very little value for walking access or any other public purpose. In these circumstances, local authorities may need greater flexibility to consider options such as land sales or exchanges.