

## GREATER WELLINGTON REGIONAL COUNCIL SUBMISSION

**To:** Walking Access Consultation Panel

**Submission on:** Outdoor Walking Access Consultation Document

The Greater Wellington Regional Council is pleased to have the opportunity to comment on the “Outdoor Walking Access Consultation Document”.

Greater Wellington made a submission to the previous consultation process, “*Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group*”. Sections 1 (Introduction) and 2 (Access in the Wellington region) of that submission are still pertinent. A copy of that submission is attached.

### **Structure of the submission**

In this submission, we have made general comments on Greater Wellington’s role and responsibilities in relation to public access in the region. The submission then provides more detailed comments in response to the questions asked in the Consultation Document.

For ease of analysis, we have commented on topics in the order that they appear in the Consultation Document. Highlighted sub-headings are the same as appear in that document. The actual questions are paraphrased for brevity.

### **Greater Wellington’s role in promoting access**

Greater Wellington Regional Council has a role in promoting access to natural environments, and to and along the coast and rivers within the region. In addition to its statutory roles and responsibilities as a regional council under the Resource Management Act 1991, Greater Wellington is a major owner and manager of public lands within the region. Greater Wellington’s roles range from policy setting to advocacy to the physical provision of tracks and trails.

Greater Wellington’s role of encouraging access to all land is expressed in the Regional Policy Statement, regional plans (particularly the Regional Coastal Plan and Regional Freshwater Plan), regional park management plans and floodplain management plans for the major rivers in the region. These plans have been developed with considerable public input.

Walking access to water bodies in the Wellington region is most often allowed when land is managed for soil conservation or flood protection purposes, and so is available for recreational use. For example, Greater Wellington provides access to and along significant parts of the Waikanae and Hutt rivers as part of its flood control management. Additional access is provided by the significant recreational reserves owned by the territorial authorities adjacent to the Waikanae and Hutt rivers.

Greater Wellington is proactive in providing for public access through regional parks such as Belmont and Queen Elizabeth Park. Sometimes public access is restricted for security or other users of parks, for example, access for dog walking, hunting or unrestricted vehicular access may be prohibited where this conflicts with public use, safety or land use in an area.

### **Aim (Question 1)**

*Does the aim capture the two values of access to our natural resources and having our own piece of dirt?*

It is unclear in the document what “significant” rivers are, how they will be defined and whether significance relates to recreational purposes only. Some rivers are significant for local people (eg. Whakatiki River for Wairarapa people) but are not significant regionally. A set of explicit criteria that determines significance, detailing the threshold levels, would be helpful. Greater Wellington considers that some wetlands could also be included.

The document talks about walking access only but needs to be clear about whether camping or mountain bikes fall within the scope of the aim. It also needs to be explicit whether dogs are included and under what circumstances.

### **Principles (Question 2)**

*Do you agree with the principles that access should be free, certain and enduring; respect property and the environment; include access to information; reinstate lost access; and include new access?*

Greater Wellington’s comments on these principles are listed below.

#### ***Quality of access***

Greater Wellington believes that access may have to be restricted under certain circumstances for biosecurity, operational and safety reasons.

#### ***Respect for property and the environment***

Greater Wellington supports this principle, provided it is in accordance with the proposed Code of Responsible Conduct.

### ***Information and maps***

Greater Wellington supports this principle and agree that a central agency needs to be a repository for the information.

### ***Reinstating lost access***

The real question is how is this to be done? Not only should the landowner be involved but also the land manager, for example, the regional council as manager of the river system.

### **Information about access rights (Questions 3 - 6)**

*What information should be included in a mapping database? Should maps be paper or electronic? What is a useful scale? Other relevant matters?*

Public access should be depicted on paper maps at a scale of 1:50,000. This scale would only just be adequate for walking access. These maps could be topographic and cadastral maps superimposed. In addition, internet access could be made to pdf files at a scale of 1:25,000 to be downloadable and printable on A3 format. Public access could be tagged online to indicate the instrument of creation (eg paper road, esplanade strip etc.). If a single dotted line was used as the centreline of access, the width of the access would have to be defined.

Any restrictions to access could be part of the map legend. These could include:

- no overnight camping
- no firearms
- any restrictions for dogs
- seasonal restrictions for lambing or fire risk
- seasonal restrictions for calving and fawning
- temporary restrictions for operational reasons such as logging operations in forests
- access by arrangement only, such as tour groups in water supply catchment areas
- permanent restrictions for ecologically protected areas or water supply catchment areas
- restrictions on access to water supply structures
- areas that may have restricted access in the future, such as future water supply catchments.

### **Signposting (Questions 7 & 8)**

*Is signposting necessary? How extensive should it be? Who should be responsible and who should pay?*

Signposting is probably only necessary at the start of tracks at public roads and car parks. Signs would not be required to be indicated on maps. A map of the track would be useful on the signpost. There could be markers where a track is not fenced. Signposts should only be required for formed tracks, and not where:

- Physical access is difficult
- There is no physical track.

### **Code of responsible conduct (Questions 11 - 13)**

*Should a code of conduct apply to private land or to public land, or both? Should it be regulatory or non-regulatory?*

The code of conduct should be non-regulatory and should apply to public and private land. The codes that have already been developed by the Department of Conservation and the draft code by Federated Farmers could be used as a starting point. The Code should include:

- rubbish removal
- care for the environment
- behaviour around farm animals
- biosecurity issues
- whether or not dogs are permitted.

### **Access agency (Questions 14 & 15)**

*What should be the functions of an agency and what form should it take?*

The functions of the Access Agency could include:

- to set up and maintain a database of mapping and land status information
- to set up and promulgate the Code of Responsible Conduct
- to determine where formed tracks and signposts should be
- to assist in negotiating access using a variety of existing tools
- mediation of disputes.

It should be some form of new public agency that comes with “no baggage”, such as a Trust. To be effective it would need sufficient funding, in particular, to enable the negotiation of access.

## **Dispute resolution (Question 16)**

*How can disputes between landowners and recreational users be resolved?*

People are more likely to understand what their rights and obligations are if public access is mapped and if there is a Code of Responsible Conduct. These two things will probably reduce the scope of disputes. Mediation should be used in preference to the Trespass Act in order to:

- form the access (with an end result of embedding this in a legal instrument)
- gain physical access.

## **Property rights (Question 18)**

*Any comments on property rights issues?*

Greater Wellington owns extensive areas for current and for future water supply purposes. In order to manage land for this purpose, Greater Wellington needs to be able to exclude and control the access of people to ensure that the quality of water is maintained.

Greater Wellington also manages rivers for flood protection purposes. This involves ownership of much of the margins of the Hutt, Otaki and Waikanae river systems, but very little ownership of river margins in the Wairarapa. The key responsibility is the maintenance of the structural integrity of flood protection works. For this reason, Greater Wellington wishes to be a party to any negotiations that involve access over river margins, even where the council is not the owner of the land.

Greater Wellington needs to be able to set what level of access is allowed on land that it manages. The level of access includes:

- temporary restrictions for operational reasons, such as forestry logging, lambing and high fire risk
- no overnight camping
- no firearms
- possible restrictions for dogs
- access by arrangement only, such as groups touring water supply catchment areas
- permanent restrictions for ecologically protected areas
- permanent restrictions for water supply catchment areas to maintain water quality
- restrictions on access to water supply structures for safety purposes
- restrictions on access in the future, to areas such as future water supply catchments
- restrictions for biosecurity purposes, for example when an area is infested or to prevent infestations.

There are circumstances when the public should be excluded for *biodiversity* reasons, for example during bird nesting periods, or because of fragile wetland ecosystems. Greater Wellington considers that enhanced public access might increase biosecurity threats by facilitating the transfer of pests and diseases.

There may also be other circumstances where private land needs to be “protected” from the public, for example, horse riders not being scared by uninvited members of the public. These circumstances can be exacerbated where it is difficult to identify the boundaries between private and public land.

### **Realignment of displaced water margin access (Question 19)**

*Do you support the realignment of water margins where these have been displaced?*

Greater Wellington supports the realignment of displaced water margin reserves, though it is recognised that individual circumstances can be complicated. The process will become clearer when the process of negotiated access to “significant” rivers is completed.

### **Gaps in water margin access (Question 21)**

*How do you think gaps in public access to water margins could be remedied?*

Gaps in public access to water margins should be addressed by voluntary agreements and mediation processes facilitated by the Access Trust.

### **Negotiated access (Question 22)**

*What would encourage landowners to agree to certain and enduring legal access?*

The following arrangements could be used to encourage landowners to agree to new access:

- monetary payment
- provision of fencing
- ability to close or restrict access at certain times
- ability to shift the route if necessary – but only in response to significant changes in circumstances
- removal of any liability to persons exercising access
- indemnity for damage caused by a user
- the establishment of a code of responsible conduct.

### **Resource Management Act (Question 23)**

*Is the current mechanism of provision of esplanade reserves and strips still appropriate?*

Greater Wellington has policies for the maintenance and enhancement of access to and along water bodies and the coast in its Regional Policy Statement, Regional Freshwater Plan and Regional Coastal Plan.

In 1998, Greater Wellington undertook an investigation into the extent of legal access to regionally significant water bodies (but not the coast). See the attached submission made by Greater Wellington in 2003. The report concluded that reserving land through subdivision is a patchy and not very effective way of providing access.

### **Resource Management Act (Question 24)**

*What measures would be appropriate for establishing new access?*

A review of how well local government has performed in the creation of esplanade reserves may be helpful.

The review could address the following questions:

- How often do local authorities reduce or waive the reserve and strip requirements?
- Do local authorities see these reserves and strips as new unwanted land that they are obliged to manage?

### **Priorities (Question 26)**

*What are the priorities for providing new access and rationalising existing access?*

The priorities for provision of access should be the same as those listed for the functions of the new Access Agency (question 14).

### **Priorities (Question 28)**

*To what extent could your organisation assist in setting priorities?*

The 1998, the Greater Wellington access report (mentioned in question 23) mapped what access was regionally relevant. Water bodies of recreational regional significance have been identified in the Regional Freshwater Plan. The provisions of the Regional Policy Statement could potentially be strengthened. The Regional Policy Statement is currently under review.

### **Unformed legal roads (Questions 29 & 31)**

*What issues will arise if unformed legal roads are marked on maps and signposted? How can weeds and pests in respect of the use of unformed legal roads be managed?*

Greater Wellington owns large tracts of land that include “paper roads”. Often paper roads do not reflect the capacity for physical access, and it can be very expensive to make a legal access physically passable.

There is a cost to opening up paper roads to enable walking access. This raises the following points:

- Who will pay?
- Large expenses can be incurred in opening up overgrown areas.
- Significant engineering works incurring large expense may be necessary to traverse deep gullies.
- The ongoing expense of maintaining access in overgrown areas may be large.
- Engineering works to make a track passable could impinge on adjoining private property.
- Environmental effects of creating new tracks can be considerable.

The use of paper roads could be the starting point for a negotiated outcome for sensible *physical* access. Is a paper road the most appropriate mechanism for gaining access for *walking* only? If not, some other mechanism could be negotiated.

If access is restricted to walking only (not vehicular), then biosecurity concerns are lessened.

### **Possible health and safety liability of landowners (Question 33)**

*As a farmer, are you familiar with the Labour Department bulletin “If visitors to my farm are injured, am I liable?”*

Greater Wellington manages around 55,000ha of regional parks, forests and farms and is familiar with the Health and Safety liability.

### **Fire risk (Question 34)**

*Any comments on fire risk?*

Greater Wellington owns extensive plantation forests. Our concern is that increased access will increase the fire risk and this will have financial consequences for the cost of insurance.

Greater Wellington also sees the need to be able to set the level of access that is allowed. Temporary restrictions may be necessary for operational reasons during high fire risk periods.

### **Biosecurity (Question 35)**

*Would people exercising walking access to land exacerbate any biosecurity risks?*

Greater Wellington must retain the ability to set the level of access that is allowed on land it owns and manages. For example, when an area is infested with weeds or animal pests, or in protecting rare indigenous species, there may need to be access restrictions for biosecurity purposes.



The proposed Code of Responsible Conduct should include biosecurity matters. Biosecurity risks could be better managed with better education and information about biosecurity threats. But who is responsible to get it to the public? And who pays? Better coordination between relevant agencies would assist. This coordination role could also be managed by the proposed Access Agency?

### **Rural crime and security** (Question 37)

*Any comments on rural crime and access?*

Currently, there is a high level of vandalism in Greater Wellington's plantation forests which includes:

- cutting fences
- sabotage of contractors' machinery
- setting fire to contractors' machinery
- damage to roads.

Greater Wellington's concern is that increasing effective public access will increase this already high level of vandalism.

Thank you again for the opportunity to comment on the consultation document. Greater Wellington would like to remain involved on the process and looks forward to hearing from you about the next steps.

# GREATER WELLINGTON REGIONAL COUNCIL SUBMISSION

**To:** Ministry of Agriculture and Forestry

**Submission on:** Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group

## 1. Introduction

- 1.1 The Greater Wellington Regional Council has a role in providing for access to urban, rural and natural environments, the coast and waterbodies within the Region. In addition to its statutory roles and responsibilities as a regional council, Greater Wellington is a major owner and manager of public lands within the Region. Greater Wellington's roles range from policy setting to advocacy to the physical provision of tracks and trails.

Greater Wellington has long recognised that access to the “outdoors” is a key community outcome for the people of the Region. Most recently this outcome has been explicitly recognised in the Council's Strategic Plan (2003-2013) as one of 15 quality for life outcomes to achieve “a good society”. The outcome states:

*“People have access to a range of open spaces, including the coast, the sea and rivers together with opportunities for leisure, recreational and cultural activities.”*

For its own part, Greater Wellington is seeking an “accessible, natural environment”.

- 1.2 Greater Wellington recognises that it plays an important part in achieving this outcome when performing key responsibilities, including:
- Environmental Management;
  - Recreational and Park Management;
  - Transport Management; and
  - Flood Protection Management.
- 1.3 A number of policy documents have been developed that reinforce the Council's role of encouraging access to both Council managed land and more widely. These documents have been developed with considerable public debate and input and include the Regional Policy Statement, Regional Plans (particularly the Coastal and Freshwater Plans), Regional Park Management Plans and Floodplain Management Plans for the major rivers in the Region.

1.4 The Greater Wellington Regional Council is therefore pleased to have the opportunity to provide the following comments on “Walking Access in the New Zealand Outdoors” – A Report by the Land Access Ministerial Reference Group.

1.5 Comments below are broadly based on the questions posed in the Consultation Document.

## **2. Access in the Wellington Region**

### **2.1 Research on access in the Wellington Region**

2.1.1 In 1998, Greater Wellington undertook an investigation into the extent of legal access to regionally significant water bodies in accordance with objectives, policies and methods in the Regional Policy Statement. The Report concluded that reserving land through subdivision is a patchy and not very effective way of providing access. Access, which does occur, occurs sporadically depending on an area to be subdivided rather than on recreational need. The investigation also concluded that there were only a small number of esplanade reserves and marginal strips in the Region.

2.1.2 Importantly, the report noted that even where access was legally provided for, it could be impaired by poor maintenance. Reserves adjacent to water bodies are not easily managed. They are geographically dispersed, subject to inundation, a focal point for recreational use and vandalism and often require labour intensive or resource demanding maintenance methods. Pest plants in some instances also make access to the water body difficult.

### **2.2 Access working well on major rivers in the Wellington Region**

2.2.1 Within the Wellington Region, effective public access to water bodies is frequently due to land being held in public ownership and managed for soil conservation or flood protection purposes, but also made available for recreational use. For example, Greater Wellington allows access to a significant part of the Waikanae, Hutt, and Ruamahanga rivers as part of its flood control management. Territorial authority recreational reserves in the Wellington Region also provide significant opportunities for access (e.g., Waikanae and Hutt rivers).

2.2.2 In the Wellington Region, the Hutt River is a success story, with effective public access for most of its length due chiefly to land purchased for flood protection. Only a small portion cannot be legally used. Visits in 1998 were estimated at 1.1 million annually and are attributed to ease of access. One of the most important elements of its success is the support and ongoing development by the Hutt and Upper Hutt City Councils and the community (via community groups such as Rotary) to realise opportunities, as they present themselves, to improve access and infrastructure in a co-ordinated manner.

- 2.2.3 Greater Wellington has also been proactive in providing for public access through regional parks such as Belmont. Management of public access may be encouraged in areas but sometimes uses are curtailed in order to facilitate proper enjoyment of parks or security for users and landowners. For example, access for dog walking, hunting or unrestricted vehicular access may be prohibited where this conflicts with public use, safety or land use in an area. In addition, special interest groups, who demand wider access rights, sometimes challenge the concept of managed public access.
- 2.2.4 Greater Wellington has also experienced success with access to regional parks through easements across land. An example, is the Landcorp Farm walkway at Belmont Regional Park. However, access is restricted for certain periods of the year and the public can not wander at will across the land.

### **3. New Zealand access strategy/agency**

#### **3.1 Is an access strategy required?**

- 3.1.1 Greater Wellington agrees, in principle, that a New Zealand access strategy could assist with addressing the range of issues and problems that affect current and future access to New Zealand's outdoors. There is growing public debate and concern that access to New Zealand's outdoors is being increasingly restricted as the social conventions of allowing access react to ever-increasing stress. If New Zealanders wish to protect and advance access arrangements, there will need to be greater certainty about rights, privileges, expectations and conduct.
- 3.1.2 Greater Wellington notes there is a core question which needs to be addressed about where society wishes to draw the line between the right to exclude someone from land and the state's interest in ensuring public access in a manner consistent with societal expectations. With respect to access to water bodies, Greater Wellington agrees that the most important initial step is a high-level policy decision as to whether:
- The popular expectation of unrestricted public access to and along water margins (especially), implied by Queen Victoria's decree in 1843 and articulated in the Land Act 1892, remains valid and needs to be reinforced, promoted or extended; or
  - Property rights, as currently understood, should not be adjusted and subdivision should remain the primary trigger for improving public access to and along water margins.
- 3.1.3 If the decision is that the popular expectation of unrestricted access to and along waterways is to be reinforced, promoted and extended, then an access strategy will be important. Without this fundamental decision, the gradual erosion of social conventions supporting access is likely to result in a decline in public access along water margins.
- 3.1.4 The concept of the bundling of property rights used in the Report could be a useful tool in moving this debate forward.

3.1.5 Greater Wellington agrees with the Ministerial Group's view that, if an access strategy is developed, it should provide a framework for leadership, co-ordination and coherence to the various approaches, programmes and initiatives for improving access. Implementation will also rely on the development of robust information on demand and availability and involvement of key stakeholders.

3.1.6 In addition, Greater Wellington considers the strategy needs to:

- Be proactive;
- Be responsive to cultural change, expectations, and future growth;
- Address issues of who bears the costs (including financial) versus the benefits.
- Use structures, relationships and legislative tools currently available;
- Clearly identify roles, responsibilities and resources, including who would drive the strategy;
- Focus on education and advocacy;
- Determine if access is necessary or appropriate to all water bodies and all coastline, or whether the focus should be on a more limited number of areas where recreational opportunities can be maximised;
- Provide for a presumption of access to public lands unless there are express reasons for prohibition and/or an organisation has developed express policy reasons for exclusion; and
- Focus first on reducing any further loss of access and gaining quick wins (e.g. by addressing concerns about the Health and Safety in Employment Act 1992).

### **3.2 Access strategy - vision**

3.2.1 Greater Wellington is concerned that the strategy could be promoted as an affirmation of the principles of the "Queens Chain". This could add to misconceptions that already exist about the "Queens Chain" and subsequent rights of access. The notion of working towards establishing legally certain and practical access to New Zealand's waterways, lakes and coast, is not questioned. In addition, information for the public about publicly owned land beside these areas (through various legislative mechanisms but commonly referred to as the "Queens Chain"), is paramount. However, Greater Wellington considers that the philosophy could be better represented through a new name to reflect and promote New Zealand's culture and future expectations of access to the coast, water bodies and public land.

### **3.3 An access agency?**

3.3.1 Any agency consequently established to implement the strategy should first assess where relationships and arrangements for access have already been established and are working effectively. Local Government is best placed to understand local demand, is often already working with the community and has established relationships which could be developed to work towards establishing access. Any access agency should

look to support existing relationships and people already working with the community rather than developing new relationships.

- 3.3.2 Greater Wellington supports the proposed function of a mediation service, as part of the access agency, to address disputes associated with access. However, to ensure this function is attractive to individuals, and therefore successful, the agency will need to be seen as independent.
- 3.3.3 Ensuring that the proposed access agency is independent will be vital in achieving improvements in public access. Restructuring, new roles and privatisation of government agencies has meant that the public sector is no longer providing helpful information, on rights and responsibilities. Addressing gaps in information, education and advocacy will be critical and can only be effectively achieved through an independent agency that builds relationships with existing agencies.
- 3.3.4 Greater Wellington also believes that the proposed access agency needs to be appropriately resourced both financially and through legislative mechanisms. Resources should be focused on supporting and empowering organisations and/or agencies that can address gaps in access.

## 4. Objectives

- 4.1 The Ministerial Group identified a range of issues and problems that affect current and future access and noted that resolution would involve both practical policy and legislative changes. The Group consequently identified five objectives that need to be addressed to ensure a way forward. Greater Wellington agrees that if access is to be maintained or enhanced, the following issues need to be addressed:
- Leadership;
  - Greater clarity and certainty about what access exists;
  - A philosophy to embrace New Zealander's expectations of access to the coast, water bodies and public land;
  - Encouragement of negotiated solutions; and
  - Ways to improve current legislative provisions for access.
- 4.2 Greater Wellington recognises that rural landowners within the Region, have legitimate concerns about public access. This is exacerbated by the proximity to a large urban area (Wellington). Access problems revolve around issues of legal/former roads and access around the coastline (largely restricted through private ownership). There is also a lack of knowledge from urban people about the standards of behaviour acceptable on rural property. The development of a national visitor code of conduct would help alleviate problems associated with public use of rural land. Greater Wellington considers that regional councils could provide a valuable contribution in developing a code.

## 5. Options – improvements through the RMA

- 5.1 The Ministerial Group comments that the Resource Management Act (RMA) provides a mandate for access to water margins and the coast, but questions whether this is sufficiently robust. Options and recommendations with respect to the RMA, include:
- A review of whether access provisions within the RMA have been satisfactorily implemented; and
  - A national policy statement on access.
- 5.2 The purpose of the RMA is to achieve “sustainable management”. One of the principles (of national importance) in achieving “sustainable management” is the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.
- 5.3 However, this principle can only be given effect to, as a Council carries out its functions under the Act. This includes the development of regional policy statements, and district or regional plans and case-by-case assessment of resource consents. The regulatory power to require/or identify land for the purpose of “access” can only occur where land is to be subdivided alongside the coast or a river, and meets the criteria contained in the Act. If a subdivision consent sets requirements above those in the Act, compensation is required, unless agreed otherwise.
- 5.4 Often Plans (e.g. District and/or Regional Freshwater and Coastal) will have policies that state an aspiration of access to water bodies, the coast and public land. However, outside the subdivision process a Council’s functions are limited to an assessment of effects on the environment and addressing these effects through consent conditions. In addition, land can only be taken/set aside to address these effects through mechanisms such as financial contributions.
- 5.5 One area that could be promoted is to ensure that access is included within state of the environment reports and plan implementation reports prepared in accordance with the Act.
- 5.6 Investigation could be undertaken into the extent to which local authorities are using their ability to waive requirements for reserve land/strips in the subdivision process. The outcome could show whether stronger policy direction is required. If so, in our view this would be better provided through enhanced and perhaps more focused provisions in regional policy statements and reinforced through a national policy that, by its very nature, will be general in application.
- 5.7 However, the Ministerial Group should recognise that the ability of a council to improve walking access to rivers, coast and public land is strongly restricted through the council’s functions and powers under the Resource Management Act. If one of the outcomes sought is to obtain greater access to rivers, coast and public land through local authority processes, this will need to involve either substantial changes to the functions of councils under the Resource Management Act, or the introduction of new

legislation. Greater Wellington would support greater emphasis on negotiated solutions and mechanisms to encourage the adoption of these in decision making processes.