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Land Access Report  
C/- Ministry of Agriculture and Forestry  
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Greater Wellington is the promotional  
name of the Wellington Regional Council

**Submission - Walking Access to the New Zealand Outdoors: Report of the Land Access Ministerial Reference Group.**

Please find enclosed a copy of the Greater Wellington Regional Council submission to the Report by the Land Access Ministerial Reference Group: Walking Access to the New Zealand Outdoors. An e-mail version of the enclosed submission was sent on 28 November.

Please note that this submission is yet to be formally approved by the Greater Wellington Regional Council. The Council will consider the submission at a meeting of the Policy, Finance and Strategy Committee on 11 December 2003. After the committee has considered the submission I will advise whether the submission has been formally ratified.

Yours sincerely

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## 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.