

Improving public access to the outdoors

*A strategy for implementing
Government's election policies*

Public Access New Zealand

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A strategy for implementing Government's election policies

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A. Unfulfilled potential

New Zealand has had Labour-led governments, this term and last. Labour's 1999 election policies for outdoor recreation were assessed by Public Access New Zealand to be very good, with a comprehensive programme which addressed many pressing outdoor issues. What Labour offered was considerably better than any other party. It is reasonable to assume that these policies influenced the vote, and contributed to Labour's ascendancy to Government.

Throughout last parliamentary term PANZ and other NGO's pressed Government for implementation of election policies in the outdoor recreation area, in particular for improvement of the Queen's Chain. However, Labour's outdoor recreation policies remained unfulfilled apart from greatly increased funding for back country huts and tracks.

In 2002 Labour offered much of the same to the electorate. The development of a public access strategy for extension of the Queen's Chain was a key highlight of Labour's 1999 policy. This was expanded to also embrace rural and urban walkways, to ensure access to natural areas as well as waterways and coastline.

B. A way forward

In conjunction with other national NGO's last year PANZ commenced preparation of a public access strategy to demonstrate to Government that there are a number of actions that could be relatively easily taken to implement their outdoor recreation policies.

PANZ was well advanced in this when Jim Sutton, the Minister for Rural Affairs, announced the appointment of a Land Access Reference Group with the object of developing a strategy for access over private as well as public land. Mr. Sutton had previously published a wish to "clarify" the law and create one code of enforceable access everywhere irrespective of land tenure. However a quest for commonality over all land has considerable dangers for existing public rights over public lands. The public cannot expect the same rights over private land as they currently enjoy over public lands.

Codified access could result in loss of impetus for further public reserve creation, particularly in 'Queen's chain' situations, under a misguided belief that recreation needs are confined to the provision of access, with no need for public controls over the use, occupation and management of water margins. Any active outdoors' person knows that the protection and management of the settings for recreation is as important as having access to such areas. That is why public reserves are created.

PANZ has met the reference group and exchanged views with it. Based on that experience PANZ has decided to complete its access strategy and submit it to both the reference group and to government as independent expert advice. Our impression is that the reference group could be considering oversimplified solutions to access which could threaten the integrity of existing access mechanisms.

By comparison PANZ sees no need for radical reform of access laws to achieve Government's stated aims. We do however see urgent need for action in accord with Labour's election policies for improving public access to the countryside, including to the coast, rivers and lakes. Our proposals, if implemented, would result in dramatic improvement to public access to the countryside and to public lands and waters. Such improvement would exceed any achievements of previous Governments.

The recreational electorate is looking to Government to honour its undertakings. If these remain unfulfilled, or are breached by negative changes with no electoral endorsement, we believe electoral confidence in the Labour government will be damaged.

This strategy primarily consists of an examination of the law relating to each major category of land or water, identification of inadequacies in law or practice, and recommended remedies in accordance with Labour's election policy.

C. What Labour promised in 2002

OUTDOOR RECREATION

"New Zealand's unique natural heritage offers a wide range of exciting recreational opportunities from the mountains to the sea. Labour believes that these opportunities must be accessible to New Zealanders of all ages and lifestyles. Time spent in the outdoors can enhance physical and mental health, awareness of the environment and pride in our nation. Co-existence between the natural environment and recreational activities is essential if New Zealanders and overseas visitors are to gain maximum benefit from outdoor recreation".

"Labour will:

- Protect the quality of outdoor recreational experiences for all New Zealanders, including those who are currently under-represented in outdoor recreation, such as people with disabilities or on low incomes.
- Promote outdoor recreation, and continue to improve the conservation infrastructure, including backcountry huts and tracks.
- Ensure that DOC's visitor policy is consistent with the requirement to foster the use of natural and historic resources for recreation and allow their use for tourism where this is not inconsistent with their conservation.
- Monitor and manage visitor impacts on the conservation estate.
- **Develop a public access strategy, including the extension of the Queen's Chain and the provision of rural and urban walkways, to ensure New Zealanders have ready and free access to our waterways, coastline and natural areas.**
- Ensure that New Zealand's natural recreational resources are not captured for exclusive commercial use but remain freely available for reasonable public enjoyment.
- **Protect public sports fishing and game bird hunting and, if necessary, amend the provisions of the Conservation and Wildlife Acts relating to the sale of fishing and hunting rights to close any loophole that permits the sale of access rights for these activities.**

- Encourage the completion of Te Araroa, ‘the long pathway’ from North Cape to Bluff, and encourage public and community consultation on proposed routes.
- Investigate ways of mitigating any negative impacts of tourism activities on the natural quiet and the quality of the visitor experience at key tourist sites”.

Source: Labour Conservation Policy 2002. www.labour.org (July 2002)

The strategy below (section E) focuses on the **highlighted** policies above.

D. Public expectations for outdoor recreation

Access to the outdoors is a key necessity for public recreational participation. However this is but one facet of recreational need. Protection and management of the settings for recreation is equally important so as to ensure that areas and resources remain attractive and suitable for recreational activity. There is no point in providing access to a resource if it is depleted, obstructed, or developed for incompatible purposes. Public ownership of public recreation areas has proved to provide greatest protection of the public interest through public input into management, public accountability for that management, and statutory bars to privatisation of the resource. Recreation need is much more than just ‘access’. However the pre-determinant of recreation remains ‘access’.

Obstacles to access

- **Difficulty in obtaining authoritative information.**
Leading to intimidation through lack of empowerment, and failure to visit otherwise available areas (largest single factor in deterring public recreation).
- **Misleading sign-posting, failure to signpost.**
The same consequence as above.
- **Obstruction of public access – a national epidemic.**
Public roads in particular, by locked gates, private property signs, fencing across roads – deliberate diversions over private property. Roads off legal alignments.
- **Institutional disinterest**, by DOC, LINZ, Local Authorities.
Most authorities reluctant, and many hostile to actioning public complaints over access obstruction.
- **Too much official discretion to close access, and misuse of powers.**
Law honoured more in the breach, pandering to entrenched private interests or to suit institutional convenience, rather than upholding public purposes.
- **Trespass criminal offence brought about by changes to trespass law in 1968 and 1980.**
“...the ordinary decent citizen who does no harm to stock or property, who wants merely to picnic by the river, to roam across the hills, or to catch fish, is not likely to be affected in any way or by any degree by this Bill”. Hon J R Hannan, Minister of Justice, on Criminal Trespass Bill. *Hansard* 1968 p 3379.
The reality is that the Trespass Act is probably the most draconian deterrent to public access over private land anywhere in the western world.
- **OSH as a reason to exclude non-paying recreational visitors.**
Concerted MAF education of landholders of absence of liability from natural hazards for non-client recreational visitors has had little effect on land occupier attitudes. There is only a duty to warn authorised visitors of work related, out-of-the-ordinary hazards. Natural hazards are excluded. Farmers

are not liable for warning trampers or visitors of natural hazards on their farm. However liabilities arise from use of man-made structures. If people pay to use farm land for any purpose, the relationship changes and a farmer has a duty to take “all practicable steps” to ensure that they are not harmed by any hazard arising on a farm.

- **Commercial capture of public resources and enhanced monetary value of privately owned resources.**
The outdoors has become commodified into ‘products’ whether physical resources, opportunities, or events. There are strong incentives to exclude non-clients. Wealthy and foreign visitors paying high access and service charges set standard for domestic population. Now a prevailing factor in denying public access or participation.
- **Changing farming practices, more intensive land use, deer fences.**
Areas previously available no longer so (e.g. ‘lifestyle blocks’, viticulture and dairying displacing sheep). Deer fences physically shutting off large tracts of countryside. Sometimes used to deliberately exclude public rather than contain stock.
- **Inflated rural land values - closer subdivision - increasing exclusivity mentality.**
Customary access over private land now increasingly challenged by new owners with non-traditional aspirations.
- **Threats of loss of access to private lands if public assert rights of access to public lands.**
A frequent deterrent to all but the most determined (requires certainty as to legal rights, making value judgements over what’s most important, and resolve not to be intimidated).
- **Alternatives to publicly owned access insecure.**
Lack of security for easements and covenants granting public access over private land. Liable to extinguishment without public process. Authorities likely to not enforce their terms when breached by landowners. No remedies for public. Public can be expelled notwithstanding rights of access granted (Section 58 Crimes Act).

Public expectations

PANZ experience and contact with a wide spectrum of recreationists indicates the following nationally held expectations –

- Practical, convenient, and free pedestrian access TO all existing public lands and waters* unless there are express nature conservation or public emergency reasons to permanently or temporarily deny access.
- As of right unobstructed and free foot and non-motorised water craft public recreation OVER public lands and waters unless for the above reasons.
- Liberal provision for different forms of access for recreation including rights to use motorised vehicles and craft, cycles and horses conditional on land protection and nature conservation, while ensuring a range of recreational opportunities regionally (by separation of incompatible recreations through management planning).
- A right of access to hunt publicly owned fish and game resources on public lands and waters.
- Public lands and waters will be managed primarily for public rather than private or commercial benefit.
- Equality of public access, recreation and benefit for all citizens irrespective of social or economic status, ethnicity or race.
- Further provision of public lands and waters at national, regional and local level to meet growing and changing recreational needs of communities.
- All the coastline, all significant rivers, streams and lakes and their banks, be protected from private occupation and exploitation, and reserved for public recreation purposes whenever the opportunity arises.

...with

- Security, certainty, clear delineation of boundaries and access on ground, no necessity for prior permission or registration, no obstruction, no harassment, and citizen remedies if obstructed.
- Readily available authoritative information on public land and access provision and rights, and adequate signage.

* For the purposes of this discussion 'public lands and waters' are deemed to include reserves held by DoC and local government for a variety of public purposes, and Crown Lands and Forests held by LINZ, SOE's, and licensees which are available for public recreation.

E. A strategy for implementing Government's election policies

This strategy consists of **six themes** –

- **Lost Lands** (reclaiming information on the public estate)
- **Public Roads & Paths** (access for all to the countryside)
- **Queen's Chain** (extending public reserves along water margins)
- **Rivers and Lakes** (securing public ownership and public recreation)
- **Bathing at the Beach** (overturning antiquated law – securing public recreation)
- **Fishing & Hunting Access** (equal access for all)

The strategy is presented with **three action levels** –

Level 1. Application of existing law (no law changes, just action).

Level 2. Extension of existing law (building on what already exists).

Level 3. New law and significant changes.

This will allow Government to quickly assess what actions can be taken immediately, and what will require law changes with their degree of significance.

PANZ believes that much can be achieved without legislative change, and that further progress can be made with only minor amendments. It is largely unnecessary to overturn a heritage of proven statutory and common law with radical new and unproven approaches to improving public access to the outdoors. A danger is that the reverse may result.

G. Public Roads & Paths – “Access for all to the countryside”

Under existing law there are a variety of mechanisms for creating public rights of way (ROW) over private land. They are often confused with or portrayed as if they are synonymous with public roads. They are not. ROW remain private lands notwithstanding any public privileges granted. This is in marked contrast to the protections and certain rights afforded by public roads which are wholly public property.

With only minor exceptions, public roads provide legal frontage to the boundaries all property, private and public. The network already exists. Roads provide Centuries old rights of unhindered passage – the leading form of ‘wander at will’ in New Zealand.

Popular mythology

1. **Public roads are just for vehicles.** However many roads predate motor vehicles. They are for pedestrians, horse riders, cyclists, and vehicles. All roads serve some purpose, including legal access to individual properties. Public highways (which include navigable rivers) are recognised in statute as a form of public road, along with carriageways, bridle paths and foot paths, as is every square or place intended for public use generally. Motorways (use confined to motor vehicles) are not public roads.
2. **Roads can only be created for motor vehicles.** Not so. New roads can be ‘dedicated’* or created for one form of access or combination thereof. Again, roads don’t automatically mean cars.
3. **‘Paper roads’ aren’t real roads.** The colloquialism ‘paper road’ has no legal standing. A road is a form of highway, whatever its state. All public roads have the same legal status and public rights. Formation or fencing is not required. No one can identify ‘freehold’ on the ground – is this then merely ‘paper freehold’?
4. **Adjoining landowners ‘own’, or must be consulted before using unformed roads.** However public roads are public property. They do not pass over private land – they bisect it. The freehold is vested in the roading authority (a major difference from English law). Use does not require consent from adjoining owners or local authorities. The right of passage is vested in the public.
5. **Roads need to be surveyed to be legal.** Roads do not require survey to ‘legalise’ them – survey often follows the opening up to public use of road realignments, as *confirmation* of amended property boundaries. ‘Dedication’* is the key to legality. This involves either an express or implied intention by a landowner to “throw open” a ‘public highway’ and EITHER a roading authority accepting it OR the public using it.
6. **There is a legal obligation to form or maintain roads.** However dollars spent is entirely within the controlling authorities’ discretion, – there is no financial liability from retaining or creating roads. Most unformed or ‘green roads’ need only marking to be used.
7. **Roads are just the responsibility of local government.** However roads can be vested in either central or local government. Government purpose roads or paths could be created for public access to public lands – doesn’t necessarily entail vehicle roads and associated costs. That is a matter for case by case decision. Public roads are the most secure form of access devised.

New Zealand’s public road network is a vast web of formed and unformed roads that ties the whole settlement of New Zealand together. With few exceptions every property, private and public, ‘fronts’ onto a public road, providing **assured legal access to property** and the sole means for citizen passage throughout the country. Without this network there would be no means for citizens to exercise their rights of freedom of movement or the ability to utilise private property. Therefore **public roads have immense constitutional importance.**

Public rights of unhindered passage are derived from the common law of England. Centuries of development of case law are embodied in our legal system. The New Zealand courts have refined this law to our circumstances and continue to make important rulings affecting roads and recreational use.

Despite a longevity of legal history, there is almost universal **ignorance of the law** and little or no reflection on the diverse purposes roads serve. Roads are such an integral part of our daily lives that they are taken for granted. Roads are widely assumed to be synonymous with motor vehicles – that they serve no purpose, and have no status in law or reality unless they can be driven along (giving rise to the notion of “paper roads”). Whereas most roads in New Zealand predate the advent of motor vehicles – they are “the King’s Highway” for pedestrian, horse or horse-powered vehicle passage, as well for latter-day motorised contrivances.

Avarice and ignorance has resulted in **widespread abuse of roads by adjoining landowners** assuming proprietary rights and excluding others by way of illegal barriers, buildings, and misleading signage. Local authorities whom administer most roads, have generally condoned obstructive private occupation despite the law being well established. Generally there has been no resolve to ensure that roads continue to serve their public purposes. PANZ’s experience is that common and statute law is breached almost as a matter of course in the daily administration of roads. Despite having all necessary powers to ensure that roads remain open and unobstructed, generally there is a lack of resolve to do so. Many councils see roads as liabilities, rather than as assets serving more than the interests of the transport and commercial sectors.

Not all roads serve, or are capable of serving purely recreational needs, however **a vast untapped resource of ‘green roads’ exist that could be utilised for greatly improved public recreational access.** Where roads don’t exist on convenient alignments, negotiated re-alignment can be instigated, or new roads dedicated.* Dedication does not necessitate vehicle access and the creation of carriageways. The fear of ongoing maintenance costs, through an erroneous “roads mean vehicles” presumption, deters most councils from considering other options. These include dedicating new roads solely for pedestrians, or pedestrians and cycles, or pedestrians, cycles and horses. The law already allows this and precedents exist.

Other than along vehicle roads, **the English path network** provides the primary means of recreational access through the countryside. This is based on roading law, a mix of common law and statute, known as ‘The Law of Highways’. Approximately 140,000 miles of path exist and more are being opened up. Many visitors to New Zealand comment that the English countryside is far more accessible than that in New Zealand, despite almost identical law and a greater network of public roads existing here. The key difference is public and institutional awareness. The law relating to public roads/paths is widely known and fiercely defended in the UK. This is because of extreme population pressure and a dearth of alternative open spaces in which to recreate. The latter deficiency is starting to be addressed through the recently enacted Countryside and Rights of Way Act. In New Zealand we have the reverse ‘problem’ – a generous provision of public lands and waters (greater than 30% of land area) but inadequate access to this and through the countryside generally.

There is immediate scope to greatly improve access to the countryside by **opening up strategic and well-placed public roads for recreational use.** Priority should be given to improving access to public lands, river margins, the sea coast, etc. This would entail using existing roads if suitable or realigning or dedicating new roads/paths.

Secondly, the recreational potential of unused roads that don’t go to public lands or waters should be utilised. An example of what can be achieved is on the Otago Peninsula where a network of twenty unformed or green

roads linking vehicle roads have been opened up for walking, greatly extending recreational opportunities on the margin of a large urban area.

No national plan is required, just local action. However national impetus is needed to encourage action. Most roads are under local authority control. These authorities should instigate a programme entailing consultation with DoC, their own reserves and recreation departments, LINZ concerning Crown land access, adjoining landholders, and the public to identify all public roads, existing access to public lands, deficiencies, and options for improvement. New roads/re-alignments will require negotiation with affected landowners. One-off compensation for land taken should be payable, with DoC or other public landholders benefiting from the access being asked to contribute. Land acquisition can be minimized by taking only sufficient width necessary for the form of access proposed (e.g. 3m for a walking path, rather than usual 20 m for vehicle roads).

Development, sign posting and way-marking should follow. A unified national standard of marking and sign posting would greatly enhance public understanding of access rights and responsibilities. Concurrent publication of guides setting out local authority, adjoining owners' and public responsibilities and rights relating to roads is an essential step to overcome the current "universal ignorance", and to encourage compliance with the law.

All the above actions can be implemented without changes to the law. What is required is the vision and will to do so. Central government needs to create the right climate conducive to local action. It all doesn't have to happen at once. Progressive action over time will allow improved access provision according to changing local needs.

Public rights over public roads are determined by the common law. This is law that is common to all roads – it applies everywhere. This commonality should assist national education of the public of their rights as well as their obligations, leading to better observance of the law and greater respect for adjoining private property.

Alternative access mechanisms

Under existing law there are a variety of mechanisms for creating public rights of way (ROW) over private land. ROW are different entities from roads, with the underlying land ownership remaining private. They are however often confused with or portrayed as if they are synonymous with roads and their rights of passage. They are not.

Various forms of easement (Walkways, access strips and other easements) have made only limited headway in securing public access over private land. This is primarily due to the reality that very few private landowners are prepared to commit themselves and future owners to permanent access arrangements. For instance, 30 years of effort to establish **New Zealand Walkways** (a form of easement) has resulted in only 170 established nationwide. The founding object of establishing a coherent national walkway system has not been even remotely realised. Through difficulty in obtaining consent for Walkways over private land, most Walkways are over public land – where legal rights of access already existed and other legislation could have been used for establishment of tracks. While extending Walkways over private land is a laudable object, experience indicates that the likely betterment to public access that may result can only be minimal compared to what is possible by utilising an existing nation-wide network – 'green' public roads.

Most easements fail the essential public expectation of secure access. They can be modified or extinguished without public process (section 126G Property Law Act 1952). This is despite often being registered "in

perpetuity” against property titles and appearing legally secure on paper. These provide true “paper access”. Most have highly variable conditions attached to entry and can be closed from time to time. There are no lawful remedies available to the public when obstructed. The public is totally dependent on the authorities to uphold their rights. However most authorities are reluctant to enforce the terms of agreements, more often ignoring breaches or amending the terms to suit the new situation. Under the Crimes Act (section 58) the public is liable to eviction notwithstanding rights under any easement. In effect these arrangements last for only as long as the current landowner’s goodwill remains. **The reality is that these are private lands notwithstanding any public privileges granted.** This is in marked contrast to the protections and certain rights afforded by public roads which are wholly public property.

Since 1993 ‘**access strips**’ have been able to be voluntarily negotiated between district councils and private land owners (section 237B Resource Management Act). Very few have resulted; the primary obstacles being lack of impetus from councils, and reluctance by private owners to commit themselves and future owners to restrictions on the use of their land.

Since 1977 Government has had express powers to acquire private land and any interest therein **“for the improvement, protection, or extension of or access to an existing reserve, or to establish a public right to wander at will on foot within specified limits in any reserve, or to provide recreational tracks in the countryside”** (section 12 Reserves Act 1977). The creation of recreation reserves under section 17 is one means to achieve the latter end. These provisions can be used either for voluntary or compulsory acquisitions. Despite the long-standing existence of these laws, PANZ is aware of them only being used once in recent years. Given their almost identical objects to those of Government’s Land Access Reference Group, it is cause for wonder at what aspects of the law need to be “clarified” to achieve greater public access to the countryside. **Vision, energy, and determination appear to be the primary determinants for public access provision, rather than alleged shortcomings in the law.**

SUMMARY OF ROAD STRATEGY

- **Locate** existing roads that serve a useful recreation or access purpose and establish sign-posted, obstruction-free public paths. *Level 1*
- **Relocate** existing roads to more practical routes. Exchange old roads for new roads (local authorities use bargaining power with adjoining land owners). *Level 1*
- **Dedicate*** new roads for foot, cycle, horse, or vehicle passage as the primary public access provision to public lands and waters where existing access is absent or inadequate. *Level 1*
- **Educate** government and local authority staff about ‘The Law of Highways’ and their responsibilities. Concurrent public education about rights and responsibilities. *Level 1*

DETAILED ROAD STRATEGY

1. Create public path network.

When access to public lands, and to (as opposed to along) water margins (the ‘Queen’s Chain’), is being created, public roads are to be preferred to other forms of access such as easements and covenants over private land. Easements, etc., are insecure, and have no public remedies when obstructed. ‘Dedication’ of public highways for classes of user, other than for motor vehicles, has had only limited application in New Zealand, but is capable of much wider use without any necessity to change the law.

Action:

- Local authorities to instigate a programme involving consultation their own reserves and recreation departments, DoC, Fish & Game, LINZ and the public to **identify all legal roads**, existing access to public lands, deficiencies, and options for improvement. *Level 1*
- When **creating new access** to public lands and waters, preference to be given to **dedication of public foot paths, cycle paths, and bridle path**, as alternatives to vehicle roads when vehicle access is unnecessary or undesirable. *Level 1*
- Central Government actively encourage local authorities to define, signpost, and develop ‘green roads’ for foot, cycle, horse, or vehicle use as appropriate, using unified **national standards of marking**. *Level 1*

2. Provide public information.

Lack of public awareness of the legal nature of public roads and an accessible map record are the primary deterrents to public use.

Action:

- In conjunction with local authorities, Government initiate **an education programme** for roading authorities on ‘The Law of Highways’. Concurrent public education about rights and responsibilities. *Level 1*
- **All public road alignments** (formed and unformed) be overlaid on LINZ topographical information and **made available electronically** and by publication (refer to section F). *Level 1*

3. Counter obstruction of roads.

Obstruction of many public roads, through a mix of ignorance and willful intent, is very prevalent. Despite obstructions being unlawful and road controlling authorities having enforcement powers, most fail to protect the public interest.

Action:

- Introduce a legislative equivalent to that in the UK Highways Act creating **a duty for authorities in control of roads to “assert and protect public rights of passage”**. *Level 2*
Obstruction of public roads is the largest access problem in New Zealand. PANZ deals with such cases on a daily basis, when called upon to provide advice to aggrieved members of the public. The biggest obstacle to resolution is invariably official reluctance to bat for the public interest. Despite having extensive powers to deal with illegal obstruction, most councils are very reluctant to exercise these and more than occasionally hostile to public representations. This results in the law being repeatedly flouted and the public barred, or members of the public being forced to take direct action at the risk of confrontation.
- Introduce **offence provisions for failure to signpost gates** as ‘Public Road’ across formed roads (an existing requirement, section 344(2) Local Government Act) that is universally ignored). *Level 2*
Councils currently have power to authorise gates across public roads provided signs are erected and maintained stating ‘Public Road’. It is however exceptional to see this requirement observed. The absence of such signs creates uncertainty in most peoples’ minds as to their right of use, by implied assertion of private property. It should be an express offence not to erect and maintain such signs, with councils having a duty to either ensure compliance, or remove offending gates.
- Introduce **offence provisions for misleading signs or notices** on or near roads containing false or misleading content that is likely to deter public use. *Level 2*

The only sign posting concerning the legal status of roads should be 'public road'. The erection of sign posting stating or implying some other status should be made an offence, along with signs implying that roads are closed when they are not. Councils should have powers of removal and recovery of costs. Misleading sign posting should be deemed to be an obstruction, triggering the proposed Council duty to assert and protect the public right of passage.

4. Retain citizen rights of unhindered passage.

Continued public ownership and control of public roads is essential for continuation of common law rights of unhindered passage. The New Zealand Courts have proven that they are far more reliable upholders of these rights than politicians.

Action:

- Retain public ownership and control of public roads. *Level 1*
- **Reject any attempt to codify or define/qualify public rights of passage in statute**, due to the major risk of reduction in existing rights, and once legislated, the further weakening or revocation of these. *Level 1*

5. Amend road stopping procedures.

If the Crown so wishes, unformed roads can be disposed of without public process, despite public use rights being the same over all roads. The presumption that unformed roads serve no purpose is erroneous because many unformed roads are regularly used, particularly by pedestrians, and many are capable of use with greater awareness of their existence.

Action:

- Amend statutes to make an existing power of Crown resumption of unformed roads (section 343 Local Government Act) subject to public 'stopping' procedures. *Level 2*
- Add a requirement to the 10th Schedule of the Local Government Act to ensure retention of property frontage and practical, public access to public reserves, lakes, rivers, and the sea coast when local authorities and the Environment Court make road-stopping decisions. *Level 2*

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* **'Dedication'** is the key requirement for creation of public roads. Before there can be a dedication, there must be "*animus dedicandi*. This means a land owner's intention of setting apart as public road, followed by either official or public acceptance. The effect of dedication is that the freehold of the road is transferred to the roading authority, usually a district council. A landowner's intention may be either explicit or implicit. Acceptance by the public requires no formal act – just acceptance through use. These days an intention by a landowner to dedicate a public road is usually by express action. This usually involves statutory law, but does not require this. Many historic roads are derived from informal actions and practices covered by common law.