Kelloggs/Primary Industry Council Rural Leadership Programme

# ACCESS OVER PRIVATE PROPERTY – PUBLIC INTEREST vs PRIVATE RIGHTS

# (A THINK-PIECE)

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# Introduction

In the 1700s, Blackstone summed up property as:

> *"that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe"* (Blackstone 1783 Book 11:2, in Boer, 1992, 45)

Blackstone viewed property rights as absolute, subject only to the sovereign power and protected by the law, even at the expense of the wider public interest (Boer, 1992, 45).

The exercise of private property rights is however, increasingly subject to restrictions by legislation and regulation in the wider public interest. Particularly in New Zealand, environmental and resource management law *"has become integral to, and a major influence upon, the allocation and exercise of real property rights"* (Grinlinton, 1995). The current debate about the adequacy (or otherwise) of walking access in the New Zealand outdoors and the potential provision of public access over private land, raises questions about a further restriction on private property rights. The further qualification of rights of property through (potentially) legislation, inevitably results in tension between two competing ideologies; private property and the public interest.

This project seeks to discuss the current access debate in the context of those competing sets of values and to stimulate the reader's thinking about the value and basis of the debate. Firstly, the current access debate is outlined, followed by a discussion of the concept of private property rights, the conflict between public and private interest and differing perspectives of infringements on those rights. Potential issues for farmers arising from increased public access over private land are then set out. The project concludes by questioning the wider motives behind the access debate within the political context.

# Walking access in the New Zealand outdoors: Report by the Land Access Ministerial Reference Group

## *What's been happening?*

The current inquiry into the availability of walking access to water margins and the outdoors began as the result of a paper written by Jim Sutton (now Minister for Rural Affairs), in 1996. At that time he expressed concerns that *"significant future problems might arise if action was not taken to clarify and enhance access rights"* (Land Access Ministerial Reference Group, 2003, 2). The Minister raised the concept of a legislatively backed code of public access to all New Zealand's countryside irrespective of land

ownership, to sweep aside *"the muddle of public access emotions on issues such as pastoral leases, overseas investment and the Queen's Chain"* (PANZ, June 1996).

In March and September 2002, further reports by Jim Sutton were considered by the Government. In January 2003, a Land Access Ministerial Reference Group ("LAMRG") was formed to consider the following question:

> *"Whether there is sufficient certainty, information, mechanisms and awareness of expected conduct to ensure responsible public access to waterways and private rural land while providing for private land use, both now and in the future?*

The LAMRG was set up to "study" issues around access to land *"in response to concerns over the need to clarify and enhance the legal situation pertaining to public access over private land and the foreshore of lakes and the sea and along rivers"* (Sutton, Ministerial Statement). The access issue is one of the matters that the Labour Party indicated in its election manifesto needed work. Labour views the LAMRG, its Report and the work that will follow, as a fulfillment of that election promise (Sutton, 11/8/03, Media Statement).

11 people were appointed to the LAMRG, which was asked to advise the Minister on:

- Access to the foreshore of lakes and the sea and along rivers;
- Access to public land across private land; and
- Access onto private rural land to better facilitate public access to and enjoyment of New Zealand's natural environment.

On 11 August 2003, the Minister released the LAMRG'S report entitled *"Walking Access in the New Zealand Outdoors"*[1]. As part of their investigation, organisations *"with a real and long-standing interest in and knowledge of the topic were invited to provide written comment and meet with the Group"* (LAMRG, 4). The general public were not involved in the formulation of the Report (refer to Appendix One for a list of the organisations who were involved).

Since the release of the Report, the Ministry of Agriculture and Forestry has been seeking comment and feedback from the public on the Report, on behalf of the Minister of Rural Affairs (Jim Sutton). A series of public consultation meetings and hui around New Zealand began in late September and have taken place during October.

[1] The Report was the product of 7 months of research by the LAMRG

Submissions on the Report close on 30 November 2003[2]. According to Jim Sutton, *"the consultation will be an opportunity for anyone to tell the Government their views on walking access to land"* (Sutton, Media Statement, 10/9/03).

## *What do we know at this stage?*

The LAMRG found that *"the current law and institutional arrangements are inadequate to meet public expectations for access in today's society"*. It also found that *"there is a lack of clarity and a gap between expectations and understanding of those seeking access and those providing access to recreational areas – particularly where it involves crossing private land"* (Sutton, Media Statement 16/9/03).

The report proposes a New Zealand Access Strategy, which has five objectives which underpin it:

- To strengthen leadership and to provide direction for, and coordination of, access arrangements nationwide;
- To provide greater clarity and certainty of access by locating and publicizing what is acceptable and where it may occur;
- To affirm the validity and embrace the ethos of the Queen's Chain by providing mechanisms for its promotion and enhancement;
- To encourage negotiated solutions; and
- To find ways to improve current legislation provisions for access.

(LAMRG, v).

As outlined above, the Report recognizes that there is a divergence between the expectations and understanding of those providing and those demanding access, which leads to tension between landowners and users. Essentially, this is a tension between two competing sets of values, the private property ethos and the public interest ideology. As expressed in the submission to the LAMRG by Federated Farmers, the "study" of issues around access means that the ability of farmers to control access to their property may be eroded. *"That their property rights are in danger of being overridden by a public "right" of access"* (Federated Farmers, 2003). The concepts of the public interest and private property rights are discussed below.

[2] All submissions should be directed to Land Access Report, c/- Ministry of Agriculture and Forestry, P.O. Box 2526, Wellington.

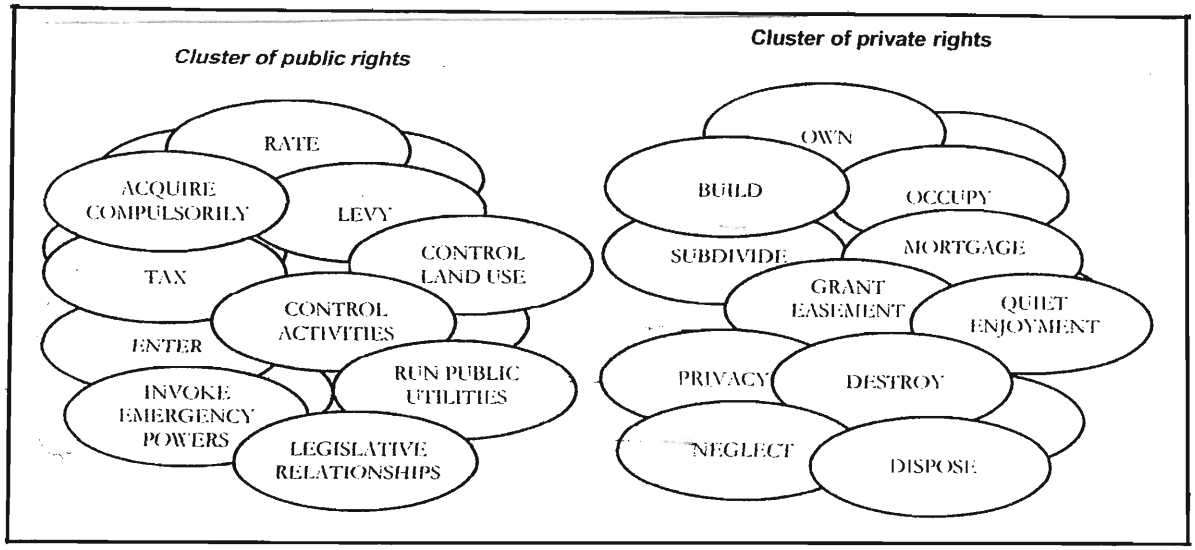
## Public interest vs private property rights

Blackstone's conception of traditional property rights has its foundation in common law and has, by and large, been followed for two centuries (Boer, p.45). "Life, liberty and property" have traditionally been the basis of individual rights in most developed societies. According to Sax (1989, 3), the *"essence of the legal structure of resource ownership is the division of the earth into segments... and then [it is up to] each owner within his own fenced enclave to exploit the resource to his maximum benefit"*. This traditional view of ownership has been limited only by established common law rules and principles such as actions in private and public nuisance and trespass. These have focused on the avoidance of interference by a person's actions with the identical rights of other owners.

The system of property rights in New Zealand dates back to the Magna Carta in 1215. The Magna Carta states that *"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land"* (Davis, 1989 in Guerin, 2002, 2). For centuries, the common law has been more concerned with the protection of private rights than with matters of public interest (Fisher, 9). The possession and ownership of land and the exercise of political power were "intimately related" until well into the 19th century (McAuslan, 1980, 19) and "the courts developed principles, precedents and rules of statutory interpretation" which were designed to protect landowners against legislation passed to the benefit of the "property-less". "The whole climate and ideology of the law stressed private property, its uses and transactions" (McAuslan, 19). Common law actions such as private and public nuisance and trespass, were primarily devoted to stopping others from harming a person's proprietary interest, usually in terms of causing interference with the quiet enjoyment of their land (Boer, 50). "Thing" ownership was in effect the control of a piece of the material world which brought both freedom and status (Grey, in Boer, 47).

In today's more complex society, *"Private property is not the mere possession of a physical asset, but an open-ended bundle of diverse rights"* (Kasper, 2003, 24). Modern ideas of property tend not to focus on simple "thing" ownership but rather on this "bundle of rights" which *"represents a set of social relations between various rights holders"* (Boer, 46). According to Kasper (9), the bundle of rights gives owners autonomous rights to use property as they see fit and to exclude others from using the asset. Other examples of private rights within the "bundle" are set out below in Figure 1. Boer (43) also notes that the bundle includes *"the power to transfer property from one owner to another"*. Figure 1 also illustrates different aspects of public rights.

**Figure 1: Public rights and private rights**




*(from LAMRG, 30)*

The traditional common law approach views the law as existing to protect private property and its institutions. Proponents of the public interest ideology believe that *"the law exists and should be used to advance the public interest, if necessary against the interests of private property"* (McAuslan, 19) and provides the basis for a *"programme of action to advance the public interest, often and if necessary against the selfish interests of the private landowner"* (McAuslan, 20).

Increasingly, the bundle of private property rights is being qualified by regulation. This is particularly evident in the context of resource management and environmental law. Limitations on private property rights from legislation such as the Resource Management Act 1991 is evident in decisions of the courts such as *Falkner v Gisborne District Council [1995] NZRMA 462.* In that case, Barker J. declined to uphold the common law right of frontagers to protect their properties from the sea, and took the view that the coastal management regime contained in the Resource Management Act excluded the pre-existing common law rights of landowners.

In the past few decades, the freedom to exercise private property rights in land has been reduced significantly. As outlined above, the exercise of rights of property is increasingly subject to restrictions and the extent of the "bundle" of rights which form the basis of "property" is diminishing. According to Kasper (6), we are experiencing a *"creeping erosion of individual property rights through costly regulations, which take private*

*property rights away without compensation"*[3]. In Kasper's (24) view, throughout western capitalist societies, *"Parliaments and bureaucrats busy themselves decreeing regulations which extinguish long-existing private property rights. They do so ostensibly for good causes – to improve safety, public health*[4]*, environmental conservation*[5]*, social equity (however defined), the national culture and much more"*. This is known as regulatory expropriation (Kasper, 24).

In the context of environmental regulation, the concept of property is fundamental as it is the mechanism which *"simultaneously authorizes and controls the use of the resource to which the rights relate"* (Fisher, 180). Rights of property are the instruments through which power is conferred on persons to have access to and use the environment as a resource. It is also the means through which resource managers *"may lawfully be directed to achieve objectives that are socially, culturally, economically or otherwise desirable"* (Fisher, 181).

The LAMRG viewed property rights as a societal construct, comprising social, economic and legal elements, which as such, are subject to constant change. The ownership of the "bundle" of property rights is thus limited by the exercise of the power of the government on behalf of the community.

## Differing perspectives of infringements on property rights

The private property and public interest ideologies are evident in different perspectives of "intrusions" on property rights. The Report of the LAMRG outlines two very different views of property rights. The first is that property rights are not fixed but fluctuate depending on prevailing economic and social conditions. The second is that there is an unfettered ability to use land and that the certainty that this provides is the cornerstone of a market economy.

In terms of the former, the Report of the LAMRG considers that this view may for example, *"require a person to give up private value for public benefit and that socially moral action should not be "rewarded""* (LAMRG, 32). In the context of the environment, proponents of the former (public good at the expense of private gain) argue that the realization that all aspects of the environment are interconnected and that the actions of private landowners generally have cross-boundary effects on the wider environment means that the traditional view that *"my land is my business... because it affects me and only*

[3] Kasper terms this "creeping expropriation" "neo-socialism" as opposed to classical socialism, which promotes outright expropriation.
[4] C.f. Health and Safety in Employment Act 1992
[5] C.f. Resource Management Act 1991

*me"* (Sax, 8), is no longer tenable. On the other hand, supporters of private property rights argue that private property does not solely benefit those who have it, but that it is private property that *"encourages people to care for the environment"* (Ackroyd & Hide, 1990, 135). Ackroyd & Hide (135) argue that it is in the interests of landowners to care for "their soils and their vegetation" and that the reasons water and air have been "freely polluted" is "because of a lack of private property in these resources". It is their view that it is private property that is the solution to the problem of environmental degradation. These competing ideologies lead to tensions and sometimes vocal opposition to environmental regulation such as the Resource Management Act.

Kasper (2003) advocates the second perspective. In his view, effective markets depend on reliable and well-enforced property rights (38). Security and confidence in property ownership leads to creativity and the creation of wealth. Kasper (25) considers that the new "neo-socialist" political movement *"still think that wealth creation is based on the mere exploitation of the land or the workers..."* and have *"little understanding of the toil, investment, innovation, learning and risk-taking by enterprising people"*. They have *"little appreciation of how secure wealth empowers creative people and how competitive risk taking by confident property owners creates wealth"* [6](26).

Guerin (10) appears to hold a view somewhere between the two perspectives. He considers that *"any property right can be seen as held subject to a general understanding of the constraints imposed by the community (expressed through judicial interpretation, statutory definition or direct community/ peer pressure) with the knowledge that those constraints evolve over time, but that the right will not be unduly altered without consent or compensation"*.

The two different perspectives set out in the LAMRG Report can be related, by and large, to the differing ideologies of the left and right-wing political parties in New Zealand. For example, Labour and the Greens adhere more closely to the first perspective whereas National and Act policies are more in-line with the latter.

The National party believes in ownership and that landowners must be properly consulted and compensated if their legally established private property rights are compromised (Carter, press release, 13/8/03). David Carter (National Agriculture Spokesman) has stated that private property rights are sacrosanct (Carter, press release, 13/8/03). National supports private property rights as it is *"one of the fundamental principles of a free society that private property is protected by law"* (Speech by Wayne Mapp, 4/10/03) but is not committed to the absolute supremacy of private property (for example, taxation is a form of "taking" and infringement on those rights (Listener,

[6] Kasper likens this to "economic illiteracy".

23/8/03)). However, National's Land Policy commits it to "uphold private property rights in town and country" (National Party website – Land Policy). The Act Party's position is that private property is sacrosanct and must be upheld. They consider that no taking of private property rights should take place without compensation and that even taking with compensation cannot be justified if private landowners wish to retain exclusive use and enjoyment of their land (Act Party press release, 7/8/03).

The Labour Party's Rural Policy states that *"Labour will: "Clarify public rights of access to high country and other land""*. This statement in itself indicates that Labour views public rights as taking precedence over private rights. The policy presupposes that there are "public rights of access" to clarify. (At the extreme, several Labour MPs strongly believe that the "State" should hold title to all land in New Zealand[7].) The Greens take a similar view to Labour's policy. Jeanette Fitzsimmons[8] considers that the LAMRG Report *"has reminded us that [rights of public access] to the commons are being eroded and need greater protection"* (Fitzsimmons, 21/8/03).

In terms of the access debate, organisations such as Fish & Game adhere to Labour's stance, whereas the views of Federated Farmers align more closely with National and Act. Surprisingly, Public Access New Zealand supports the view that private property rights should be upheld (Eckhoff, 30/1/03).

## Issues for farmers

The submissions to the Reference Group and the subsequent public meetings have identified a number of issues of concern to rural landowners. Much of this relates to the conduct of the public on private land and the potential abuse by the public of access rights. These concerns are summarized in Appendix Two.

A significant concern is the issue of compensation. The terms of reference for the LAMRG did not specifically include consideration of compensation (refer Appendix Three). Further, the Report appears to suggest that access rights over private land be provided without compensation (Eckhoff, 29/9/03). Both the summary of submissions to the LAMRG and the resultant report steer clear of the compensation issue, despite the fact that it was clearly raised in submissions. Federated Farmers' submission specifically discusses the issue of compensation for taking property rights.

[7] Personal communication with Hon. John Luxton, retired National Party MP (discussions with Labour MPs regarding land ownership)
[8] Green Party Co-Leader

Guerin discusses the issue of compensation for government takings. He defines a "taking" as *"the act by which government assumes or assigns control over all or part of a property right (or legal right) held by a private party"* (Guerin, 1). *"In economic terms, it can be seen as government appropriating private property to achieve a public benefit"* (Guerin, 2). "Physical" takings can be contrasted with "regulatory" or "partial" takings, which occur where government *"limits the nature of a property right by means of legislation, regulation, planning processes, permits or other regulatory means"* (Guerin, 2). Historically, compensation has been argued to be due when *"a given person has been required to give up property rights beyond his just share of the cost of government"* (Stoebuck, 1972, in Guerin, 5).

Arguments for not compensating include *"where the costs of identifying and assessing rights to compensation exceeds the benefits of paying it, the benefits affect the same people as the costs, and the taking is restricting the use of market power to the risk adjusted return on capital"* (Wilkinson, 2001, in Guerin, 5). Governments usually compensate for a physical taking of a piece of property[9] but not for reducing the use to which private property can be put (Guerin, 14). However, in New Zealand, fundamental common law principles require that property will not be taken without compensation. The Legislation Advisory Committee Guidelines state that *"if legislation would implement a taking of property, consideration should be given to whether compensation should be paid to those affected. Where the legislation would constitute a taking of property and it is not intended that compensation will be paid, the legislation should make this quite clear"* (Guerin, 16).

The arguments for and against compensation centre on the competing ideologies of private rights and public interest, discussed above. As Federated Farmers stated in their submission to the LAMRG, it is *"unfair to impose a tax on a particular citizen simply because that citizen owns something that others want the government to own"*. Adherents to the public interest ideology would likely take the contrary view. The tenor of the Report of the LAMRG, is that landowners may be required to accept a taking of their private property rights (in the sense that their ability to use their land is restricted), for the public benefit and that such "socially moral action" should not be rewarded (LAMRG, 32).

## A sceptic's perspective

From a sceptic's viewpoint, the "tenor" of the Report outlined above gives the Report and the access debate as a whole, a "pre-determined" feel to it. Other matters of concern include that the key basis for the Report's conclusions is that the LAMRG found that social conventions relating to the provision of access by rural landholders are under pressure from changing community structures and changing farming systems and land

[9] The Public Works Act 1981 provides the mechanism for this.

use. As a result, the LAMRG concluded that there was misunderstanding between the providers of access and users. This conclusion is interesting given that Federated Farmer's submission concluded that the vast majority of farmers *"were more than happy to allow the public free access onto their properties provided they are aware of their presence and have some measure of control as to where people can go and what they can do"*.

A second matter that could be seen as pre-determining the outcome of this debate is the focus on access over rural land. The Report distinguished between urban and rural properties and specifically discusses the perception that *"homes and their curtilages are not available for access to the general public"* (LAMRG, 8). Minister Sutton has emphasized this point and stated that the Government *"has no intention of encroaching on curtilage"* (Sutton, Media Statement, 11/8/03). The Report considers however, that rural land, being characterized by low population density and open space, lacks *"the pointers that help to define private property"*. The Report goes on to state that *"while these lands are private and, in that sense, no different to urban areas, their size and openness generate quite different expectations to those that exist in urban areas"* (LAMRG, 8). The Report does not make clear what the threshold for "open space" is.

This discussion in relation to "pre-determination" leads to consideration of a wider, slightly abstract, but related issue. This is perhaps best explained by reference to two books. The first, a book entitled *"The Skeptical Environmentalist"* (Lomborg, 2001) was written by Bjørn Lomborg, a former Danish Greenpeace activist and statistician. In it, Lomborg goes back to the data behind the statements of many of the World's leading environmental lobbyists and concludes that in most cases, facts and data sets have been manipulated to suit the agendas of those groups and organisations. Lomborg challenges widely held beliefs that pollution, standards of living, poverty levels, health and education etc. are getting worse.

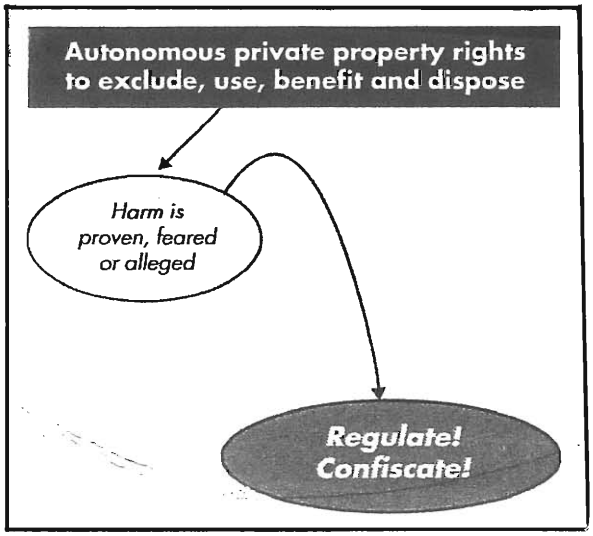
The second book is *"Stupid White Men... and Other Sorry Excuses for the State of the Nation"* (Moore, 2002) by American, Michael Moore. He was the director of the documentary *"Shooting for Columbine"*[10] which depicted and questioned America's gun culture and is a vocal opponent of President Bush's war on Iraq. In his book, Moore illustrates how the media sensationalises issues and twists stories in order to sell them to the public and to suit political agendas. In America particularly, this has developed into a society based on a culture of fear.

The current debate concerning access over private land is perhaps a further example of this. From a sceptic's point of view, it is quite possible that if the status quo remained,

[10] For which he won an Oscar Award

recreationalists would continue to gain access over private land and landowners would continue to grant access according to long established social conventions that may well be happily adapting to social change. Now however, recreationalists may arguably be "fearing" the loss of existing access because the issue has been put to the forefront of their minds. In that climate, it is arguable that regulation of some kind that equates to a taking of private property rights to "ensure" access for those people is inevitable. Figure 2 below, illustrates this.

**Figure 2: The fear culture**




*(from Kasper, 33)*

Both the National and Act political parties appear to share a sceptical viewpoint. National has suggested that the Government *"Deliberately released its report on coastal access at the time of the foreshore debate to confuse the issue"*, which it describes as "nothing but political deviousness" (Speech by Wayne Mapp, 4/10/03). Act has stated that it believes that Labour *"has targeted outdoor recreational groups as a potential voting bloc for the next election"* and is "determined " to gain that vote by removing the rights of landowners and giving them to recreationalists (Eckhoff, 15/10/03). Even more cynically, Act has questioned the Prime Minister's influence over the LAMRG, *"given her personal recreational interests, and the appointment of her personal guide, Gottlieb Braun-Elwart, to the group"* (Eckhoff, 29/9/03) and further, that the access debate *"is the result of Ms Clark being refused access to some South Island tussock country – a slight from which she has never recovered"* (Eckhoff, 8/8/03).

Whether the outcome of the debate has been influenced to that extent is questionable, however the ability of organisations (including Governments) to utilize fear and scaremongering to drum up public support to suit their own agendas is not something to be disregarded.

## Conclusion

Traditionally, our legal and social institutions have been structured around the protection of private property. The exercise of private property rights is however, increasingly subject to restrictions by legislation and regulation in the wider public interest. The current debate concerning public access over private land has the potential to result in further qualification of those rights. This brings with it a new set of concerns for rural property owners and is already adding "fuel to the fire" of tensions between the competing ideologies of private property and public interest.

A cynical view of the access review process to date is that the Labour-led government is simply "going through the motions" and that the outcome of the debate has been pre-determined. Minister Sutton has said that he is *"committed to ensuring that New Zealanders continue to have the opportunity to communicate with nature through the soles of their feet"* (Sutton, Ministerial Statement). Further, the fact that the reasoning behind the appointment of the LAMRG has been described as *"in response to concerns over the need to clarify and enhance the legal situation pertaining to public access"* (Sutton, Ministerial Statement), presupposes the fact that concerns actually exist. Rural property owners should be prepared for another intrusion on their right to enjoy their property *"in total exclusion of the right of any other individual in the universe"* (Blackstone, in Boer, 45)

# Bibliography:


- Ackroyd, P. & Hide, R.P. 1990: "The ownership and control of mineral and other natural resources", in *New Zealand Law Journal*, Wellington – April 1990.
- Boer, B. 1992: *Some Legal and Ethical Issues*, Macquarie University, New South Wales.
- Fisher, D. 1993: *Environmental Law*, The Law Book Company, New South Wales – Chapter 1: "The Context of Environmental Law" and Chapter 3: "Rights of Property in the Environment".
- Grinlinton, D. 1995: "Property rights and resource management", in *Butterworths Resource Management Bulletin*, Vol.1, No.12 – September 1995.
- Guerin, K. 2002: *Protection against Government Takings: Compensation for Regulation?*, New Zealand Treasury Working Paper 02/18, New Zealand Treasury, Wellington, September 2002.
- Hayes, B.E. 2003: *The Law on Public Access Along Water Margins*, Ministry of Agriculture and Forestry, Wellington, August 2003.
- Kasper, W. 2003: *In Defence of Secure Property Rights*, CIS Occasional Paper 84, The Centre for Independent Studies, New South Wales, 2003.
- Lomborg, B. 2001: *The Skeptical Environmentalist – Measuring the Real State of the World*, Cambridge University Press, Cambridge, UK.
- McAuslan, D. 1980: *The Ideologies of Planning Law*, Pergamon Press, UK.
- Moore, M. 2002: *Stupid White Men... and Other Sorry Excuses for the State of the Nation*, 1st Edition, Regan Books.
- Sax, J.L., House, J.H. & Hurd, H.H. 1989: *The Law of a Liveable Planet*, paper presented to International Conference on Environmental Law, Sydney – 15 June 1989.
- Taranaki Regional Council, 2003: "Submission on the Land Access Report", September 2003.
- Williams, D.A.R. 1997: *Environmental and Resource Management Law in New Zealand* (2nd Edition), Butterworths, Wellington.

Case law:

- *Falkner v Gisborne District Council [1995] NZRMA 462*

Legislation:

- New Zealand Walkways Act 1990
- Local Government Act 1974: Part XXI – Roads (Other than Regional Roads), Service Lanes, and Access Ways, Tenth Schedule
- Public Works Act 1981

Newspaper articles:

- "Rural land access fires up meeting", in *The Daily News*, 22 October 2003.

Reports:

- *Walking Access in the New Zealand Outdoors – A report by the Land Access Ministerial Reference Group*, Ministry of Agriculture & Fisheries, Wellington – August 2003.
- *Report of the Ministerial Advisory Committee on Biodiversity and Private Land*, Ministry for the Environment, Wellington – August 2000.
- *Summary of submissions to the Ministerial Reference Group on Land Access* – July 2003

Websites:

www.act.org.nz

Press releases – Rural:

- Eckhoff, G., 15 October 2003: "Property Rights Petition Launched"
- Eckhoff, G., 29 September 2003: "Rural Landowners' Rights Under Threat"
- Eckhoff, G., 24 September 2003: "Landowners Urged to Send Govt the Message"
- Eckhoff, G., 12 August 2003: "Property Owners Must Protect Their Rights"
- Eckhoff, G., 8 Sugust 2003: "Labour Confuses Foreshore with Property Rights"
- Eckhoff, G., 7 August 2003: "Private Property Rights Must be Upheld"
- Eckhoff, G., 17 July 2003: "Private Property Still Sacrosanct – Eckhoff"
- Eckhoff, G., 17 June 2003: "Enough is Enough, Close the Gates"
- Eckhoff, G., 19 March 2003: "Deadline Raises Serious Questions"
- Eckhoff, G., 24 February 2003: "Landowners Beware"
- Eckhoff, G., 20 February 2003: "Read the Treaty? Yeah, Right"
- Eckhoff, G., 30 January 2003: "Welcome Aboard, PANZ"

- Eckhoff, G., 27 January 2003: "Campaign to Stop Freedom to Roam"
- Eckhoff, G., 24 January 2003: "Government Insults Rural New Zealand"
- Eckhoff, G., 23 January 2003: "Whipping Boy Sutton Wounds Rural New Zealand"
- Eckhoff, G., 22 January 2003: "Property Rights Under Threat"

www.beehive.govt.nz

- Hon Jim Suttton, 11 August 2003: "Land Access Reference Group report released".
- Hon Jim Sutton, 16 September 2003: "Consultation on walking access begins"

www.fedfarm.org.nz

Issues:

- Final Submission – Access to Land Issue (Issues>Submission> Land Access)
- Hotseat: Access Reference Group (Issues>News)
- Wandering Public at Risk (Issues>News)

Media Releases:

- 6 October 2003: "High Country Access Not A Problem" - South Island High Country Committee
- 1 October 2003: "Government's Access Consultation a Sham"
- 29 September 2003: "Public Access Meetings Designed to Disadvantage Landowners" – North Canterbury Federated Farmers

Speech Notes:

- Tom Lambie – President's Address, Federated Farmers of New Zealand (Inc), 58th Annual Conference, Mercure Auckland Hotel, 15 July 2003

www.fishandgame.org.nz

- Media Release, 11 August 2003: "Access Report Confirms Countryside Closure"

www.greens.org.nz

- Fitzsimmons, J., MP, Green Party Co-Leader: "Foreshore and Seabed: can customary title co-exist with the Commons?", 21 August 2003

www.listener.co.nz

- Easton, B.: "Rightful owners", in *New Zealand Listener*, August 23-29 2003, Vol 190 No 3302

www.maf.govt.nz

- Hon Jim Sutton, MP for Aoraki, Minister for Trade Negotiations, Minister of Agriculture, Minister of Forestry, Minister for Biosecurity, Minister for Rural Affairs – 11 August 2003, Media Statement
- Office of Hon Jim Sutton: Report of the Land Access Ministerial Reference Group: Walking Access to the New Zealand Outdoors, Ministerial Statement
- Rural NZ, People and their issues - Access

www.national.org.nz

- Mapp, W., MP North Shore: "What should the Centre-Right Response to the Foreshore Issue be?" – Speech to Foreshore, Law and Politics Conference, 4pm, 4 October 2003
- National Party policy – Land

www.nzherald.co.nz

- "Lambie's list", 17 July 2003.

www.scoop.co.nz

- Hon David Carter MP, National Agriculture Spokesman, 13 August 2003: "Private property rights deserve respect"

www.stuff.co.nz

- Fairfax New Zealand Limited, 15 October 2003: "Worried farmers air access fears"
- Fairfax New Zealand Limited, 16 October 2003: "ACT MP launches petition to protect property rights"
- The Marlborough Express, 16 October 2003: "Accessing the great outdoors"
- The Nelson Mail, 16 October 2003: "Land access raised fear for security"
- The Press, 10 October 2003: "Farmers support access rights"

# Appendix One: List of organisations consulted on the LAMRG Report

Athletics New Zealand
Department for Courts
Department of Conservation
Federated Farmers of New Zealand
Federated Farmers of New Zealand - South Island High Country Committee
Federated Mountain Clubs of New Zealand
Federation of Maori Authorities
Fish and Game New Zealand
Game and Forest Foundation
Land Information New Zealand
Landcorp Farming
Local Government New Zealand
Ministry for the Environment
Ministry of Justice
Ministry of Tourism
New Zealand Alpine Club
New Zealand Conservation Authority
New Zealand Council of Outdoor Recreation Associations
New Zealand Farm Forestry Association
New Zealand Federation of Freshwater Anglers
New Zealand Forest Owners Association
New Zealand Mountain Bike Association
New Zealand Mountain Guides Association
New Zealand Police, National Headquarters
New Zealand Professional Flyfishing Guides Association
New Zealand Property Institute
New Zealand Rafting Association
New Zealand Recreation Association
New Zealand Recreational Canoeing Association
New Zealand Tourism Association
Outdoors New Zealand
Public Access New Zealand
Queen Elizabeth II National Trust
Real Estate Institute of New Zealand
Rotorua Professional Trout Fishing Guides Association
Royal Forest and Bird Protection Society
Rural Women New Zealand
Sport and Recreation New Zealand
Surf Life Saving New Zealand Inc
Surfing New Zealand
Te Arawa Maori Trust Board
Te Puni Kokiri
Te Runanga O Ngai Tahu
Te Runanga O Ngati Porou
Te Runanga o te Whanau Tribal Authority
Tuwharetoa Maori Trust Board
The Treasury
Yachting New Zealand

# Appendix Two: Issues for farmers

| Concern | Explanation of concern |
|---|---|
| Visitor safety | • Manmade and natural hazards<br>• Health risks<br>• Dangerous stock |
| Visitor behaviour | • Inconsiderate behaviour<br>• Use of land for illegal purposes<br>• Litter<br>• Fire risks<br>• Lack of respect for private property |
| Responsibilities of visitors | • Should be under a duty to take care when visiting a property |
| Landowners' liabilities towards people on their properties | • Criminal liabilities<br>• Civil liabilities |
| Increased costs to landowners (farmers/ foresters) | • Animal health and welfare could be compromised<br>• Disruption of stock and farm/ forest management practices<br>• Impact on farm productivity<br>• Expense of service provision (e.g. toilets, upkeep of tracks etc.) |
| Compensation for taking property rights | • Property owners should be paid for any "taking" |
| Rural security | • Personal health, safety and security |
| National security | • Risk of bioterrorism<br>• Security and safety of food supplies |
| Trade effects | • Negative impact from a quality assurance perspective |
| Public health | • Safety of food supplies (e.g. feeding meat scraps to cattle) |
| Biosecurity | • Unwanted pests, weeds and diseases spread by visitors |
| National interest | • Unrestricted access may be detrimental to conservation and environmental protection (may increase degradation) |

*(from Federated Farmers "Final Submission – Access to Land Issue", Summary of Submissions to the LAMRG, July 2003 and LAMRG Report, August 2003)*

# Appendix Three: LAMRG Terms of Reference

## Terms of Reference

The Reference Group is asked to test the validity of the following indicative problem:

> "Whether there is sufficient certainty, information, mechanisms and awareness of expected conduct to ensure responsible public access to waterways and private rural land while providing for private land use, both now and in the future."

In doing so, the following constraints apply for any consideration of access to private land:

- recreation means by foot only – it excludes vehicles, mountain bikes or horses;
- access must be exercised responsibly and subject to reasonable constraints for cultural and social (wāhi tapu, funerals) and land management purposes (e.g., lambing), privacy and safety purposes; and
- dogs, firearms and camping are not permitted as of right.

The Reference Group is invited to consider the following points in addressing the indicative problem:

1. The extent and nature of problems of access to waterways, the coastline and countryside;
2. Existing sources of information on access and methods for making this information more readily publicly available;
3. Whether the concept of "responsible access" is applicable to New Zealand and if so, what would the concept encompass and what legislative, regulatory, policy or other changes would be needed;
4. The current impact of access, along with the likely social, cultural, economic and environmental impacts of options for changing provisions on access. This includes the impact of increased access rights on commercial developments that rely on exclusive access;

5. Risks including:
   i. property rights (including the "right of undisturbed enjoyment, right to derive an income");
   ii. privacy and security of landowners;
6. The marginal benefits resulting from access to private rural land;
7. The "private" land that would be considered for greater public access, if any;
8. To advise on any issues associated with the development of any discussion paper on access issues;
9. Costs, including those associated with:
   - new mechanisms to establish responsible access rights
   - identifying, collecting, collating and providing information on access rights
   - legislative or other changes
   - enforcing codes of conduct if developed; and
   - legal liability issues – such as safety and health issues.
10. The Reference Group will be able to report on any other matters related to access that appear to require consideration by the Minister.