

Chair

Cabinet Policy Committee

Walking Access – Organisational structure, legislation and funding

Proposal

- 1 I propose that Cabinet Policy Committee confirm the decisions that it made in principle on 15 August 2007 for the establishment and functions of a new Crown entity for walking access. I also propose that the Committee note my intention to seek the funding necessary for the Crown entity in the 2008 Budget and invite me to issue drafting instructions for the legislation necessary to establish the entity.

Executive summary

- 2 This paper deals with matters that were approved in principle by the Committee at its meeting on 15 August 2007 subject to a report back by 5 December 2007, in consultation with the Minister of State Services (POL Min (07) 18/20).
- 3 The matters approved in principle, but subject to confirmation were:
 - the establishment of a Crown entity responsible for advice and to implement walking access policies;
 - the functions of the Crown entity;
 - the scope of the Crown entity's functions;
 - the transfer of the delivery of functions under the NZ Walkways Act 1990 from the Department of Conservation (DOC) to the Crown entity; and
 - the administering department for the NZ Walkways Act and the walking access policy.
- 4 The alternative options for an access organisation have been examined and, taking into account advice from an independent external reviewer and from the Walking Access Advisory Board, I recommend that the Committee confirm the matters approved in principle.

- 5 This paper notes the funding I will be seeking in the 2008 Budget for the operation of the Crown entity and for the contestable fund that it will administer.
- 6 It also notes that I will be seeking a legislative priority for a walking access bill and approval to issue drafting instructions.

Background

- 7 On 15 August 2007 the Cabinet Policy Committee (POL) invited the Minister for Rural Affairs, in consultation with the Minister of State Services, to report to POL by 5 December 2007 with advice on whether to confirm the decision in principle to establish a new Crown entity for walking access, including its merits relative to any alternative organisational structure and, if confirmed, to seek authority to issue drafting instructions for the necessary legislation (POL Min (07) 18/20).
- 8 The Committee agreed in principle that the functions of the Crown entity will be:
 - the provision of national leadership, including a national strategy, and co-ordination of access among key stakeholders and relevant central and local government organisations;
 - the provision of impartial and robust advice on access;
 - local/regional leadership and co-ordination to help local groups with their access issues;
 - mediation of disputes over walking access issues, including the ability to initiate negotiations;
 - the reference of disputes about legal access to an appropriate authority;
 - the creation and administration of walkways made under the Walkways Act 1990, with planning and supervision focused at a local level;
 - the establishment and maintenance of a public access mapping database;
 - administration of a contestable fund for the purpose of negotiating walking access either under the provisions of the Walkways Act 1990 or new or other existing legislation;
 - the receipt and management of private funding contributions (including sponsorships) for the promotion of walking access;
 - research, education and participation in external access-related topics and programmes; and
 - the development, promotion and maintenance of a code of responsible conduct.

- 9 The Committee also agreed in principle, subject to the report back on the organisational form, that:
- the Crown entity be empowered to:
 - consider all forms of access, in consultation with relevant organisations (there are efficiencies in an access organisation dealing with all forms of access), but with walking access as its priority area of concern; and
 - acquire access over private land and fund the acquisition of such rights.
 - the administration of the New Zealand Walkways Act 1990 be transferred to the department that supports the responsible Minister; and
 - operational responsibility for the New Zealand Walkways Act 1990 be transferred to the Crown entity.
- 10 The Committee agreed to the appointment of an advisory board for walking access. Cabinet, following reference from the Cabinet Appointments and Honours Committee, noted my proposed appointees to the board on 15 October 2007 (CAB Min (07) 37/16). The board has been appointed and has met twice. It includes appropriate Māori representation.
- 11 The alternative organisational forms that had been suggested were:
- a branded unit in a Government department; or
 - an operational function within Sport and Recreation New Zealand (SPARC).

Analysis

- 12 The Ministry of Agriculture and Forestry (MAF), with the concurrence of the State Services Commission (SSC), obtained an independent report on the merits of the alternative organisational forms that had been suggested for consideration, and their likely cost, from a consultant that specialises in state sector reform. The consultant's report concludes that:
- a branded unit within a department is the least preferred option;
 - the merits of placing the entity within SPARC are evenly balanced against those for the Crown entity;
 - the focus, visibility and leadership merits of a Crown entity need to be weighed against the capability and sustainability advantages of incorporating the function in a larger organisation (SPARC); and

- there are no material cost advantages with either of the alternatives.
- 13 I sought the advice of the Walking Access Advisory Board. It reviewed the consultants' report and considered the merits of the alternative organisational forms. The Board is unanimous that a Crown entity will be the most effective form, and is strongly of the view that a Crown entity should be established as soon as possible. I concur with these views.
 - 14 I have been advised that the option for a branded unit within a government department would, as well as not sufficiently meeting the focus, visibility and leadership criteria, would not be a suitable vehicle for the delivery of the functions in the New Zealand Walkways Act 1990. These disadvantages in my view more than offset the possibly marginally lower costs and access to departmental staff and other resources of a departmental function.
 - 15 There are also other issues with the function being carried out in a department. For example walking access does not sit well alongside the primary functions of MAF, and while DOC and Land Information New Zealand (LINZ) have related functions and expertise, stakeholders do not support walking access being the responsibility of these departments.
 - 16 The Walking Access Advisory Board considered that the SPARC option risked being insufficiently visible, lacking the focus on access issues that is being sought and having little expertise in access issues. Although this option avoids creating a new entity, it would require amendments to SPARC's statutory functions, as well as amendments to the New Zealand Walkways Act 1990, so there is no advantage from a legislative perspective.
 - 17 SPARC is undertaking a review of the outdoor recreation sector. Providing and maintaining walking access and other forms of access is a key part of gaining access to outdoor recreation areas. The Minister for Sport and Recreation has requested that the proposed walking access Crown entity and SPARC be required to work closely to ensure policy and implementation on these issues are aligned and co-ordinated in order to ensure effective planning and delivery of recreation opportunities. I support this position and recommend that the proposed Crown entity be required to ensure alignment of walking access and outdoor recreation policy and implementation.
 - 18 While the Crown entity structure is appropriate for the new entity, there are risks associated with its small size. These risks include the entity's ability to attract and retain staff and offer them sustainable employment opportunities (e.g. career development). There is also risk around fragmentation within the State Services, which could place additional co-ordination costs on the delivery of walking access functions. Leadership and co-ordination are critical in mitigating both of these risks. It will be important for the board of

the entity to have a sharp focus on achieving maximum impact within a necessarily modest work programme. The national strategy on access and the entity's Statement of Intent will be key vehicles in establishing a leadership role and in specifying the delivery of the entity's functions. It is also important that the monitoring department is able to support the entity to work effectively across government.

- 19 The capability of the monitoring department in its role of supporting the Minister responsible for the Crown entity will be crucial. I note that MAF does not currently have monitoring responsibility for any Crown entities and capability would therefore need to be built and maintained over time.
- 20 In light of the view that a Crown entity is the most appropriate structure for the access organisation I have considered the proposed functions and other matters that were approved in principle, and I conclude that they should be confirmed. This is because these functions were appropriate for a Crown entity, but may have needed to have been reconsidered or modified for an alternative organisational form.
- 21 This conclusion on the form of an access organisation is consistent with the responses received from stakeholders when I announced the Government's response to the Walking Access Consultation Panel's recommendations in August this year. Stakeholders welcomed the proposal to set up a separate access organisation. Any option that appears to resile from that approach risks re-inflaming the dissatisfaction that recreational organisations have with the status quo, impeding the implementation of the policy and upsetting the goodwill that has been established with stakeholders.
- 22 The Crown entity board would have membership appropriate to its functions, and have a similar range of experience and skills as the Walking Access Advisory Board, including appropriate Māori representation. The membership of the Board has been commended by stakeholders. I have previously indicated that I intend the Board to become the establishment board for the new access organisation, should Cabinet's decision in principle to establish a Crown entity be confirmed [POL Min (07) 17/10]. In addition, I recommend that Māori representation become an ongoing requirement of the Crown entity's board.

Monitoring department

- 23 Assuming that the organisation is to take the form of a Crown entity, it will be necessary to determine the government department responsible for monitoring the entity and the Ministerial portfolio responsibility. At present policy advice on walking access is provided by the MAF. There is no inherent reason for MAF to be the monitoring department. Nevertheless, it has the advantage of having current knowledge and experience of the policy

issues, has lead the policy process on walking access, has links with the rural community and has built a relationship with recreational groups with an interest in access. Alternatives would be the Ministry for Culture and Heritage, which is the monitoring department for SPARC, or DOC, which has experience and resources for the management of outdoor recreation. I note that DOC has little or no experience in monitoring Crown entities. Culture and Heritage has extensive experience in monitoring Crown entities, but has no relevant policy background or knowledge. Taking into account these considerations I propose that MAF should be the monitoring department.

Financial implications

- 24 At its meeting of 15 August 2007, POL noted that \$1.894 million is already provided in Vote Agriculture for walking access, in anticipation of establishing an access agency in 2005/06, and that this funding will be used to implement the decisions made at that meeting, including the operating costs of the advisory board and the establishment unit.
- 25 It also noted that the Minister for Rural Affairs will submit a New Initiatives Bid for 2008/09 on the costs of the proposed crown entity and contestable fund. Adequate funding is an inherent component of establishing the new entity.
- 26 The consultant's report on the structural options for the access organisation also reported on the estimated costs of operating the organisation. The consultant concluded that the salary estimates on which the costs of an access organisation were based in 2005/06 were now inadequate, and that after updating the salary estimates and making some provision for contingencies an amount of [DELETED: BUDGET SENSITIVE] would be required from 2008/09 onwards.
- 27 The funding requirement was also reviewed by the Walking Access Advisory Board. It expressed concern that insufficient resource was proposed for regional representation. The original estimates provided for three part time regional representatives to liaise with local government, stakeholder groups and communities. The board considers that this is inadequate, so I propose an additional [DELETED: BUDGET SENSITIVE] for this purpose (approximately a further four regional representatives).
- 28 I therefore propose to seek approval for operating expenditure for the Crown entity of [DELETED: BUDGET SENSITIVE].
There is sufficient funding in the appropriations for the current year (\$1.894 million) for the transitional arrangements (including the establishment unit in MAF and the Walking Access Advisory Board).

- 29 LINZ has expressed concern that the funding proposed will be insufficient to provide for the mapping of walking access because cadastral and topographic information datasets are designed for different purposes and to different standards – combining these datasets is a complicated and costly exercise. The 'mapping' proposal involves initially a stock take and evaluation of existing mapping resources, then a process of facilitating the provision of suitable mapping. The mapping resource would be developed progressively over time, rather than attempting to produce comprehensive mapping from the first full year of operation. Its initial source material would be from existing data bases (e.g. the topographical and cadastral databases held by LINZ).
- 30 A key component of the walking access policy is the establishment of a contestable fund. This was specified in my POL paper of 3 August 2007 (POL (07) 289), and the Committee noted my intention to seek funding for the contestable fund in a New Initiatives Bid for 2008/09.
- 31 I have considered the level of funding that will be initially required for a contestable fund. I propose to seek funding of [DELETED: BUDGET SENSITIVE] for each of the 2008/09 and 2009/10 years, with a review in 2010 of the funding needs for subsequent years, when the public demand for new access and its likely cost will be more clearly established. This would be completed in time for the 2010/11 Budget.
- 32 The Minister for Land Information is keen to promote walking access over Crown pastoral lease land in the South Island high country. In consultation with DOC, LINZ has identified gaps in the existing public access across this land. LINZ does not have provision in its appropriations for the expenditure that will be necessary to acquire the access to fill these gaps. LINZ estimates annual funding of [DELETED: BUDGET SENSITIVE] will be needed. This could be provided through Vote Agriculture if MAF is the monitoring department for walking access. A bid for this funding will need to be made in the 2008 Budget. Clearly this is closely related to the funding I will be seeking for walking access, and I will consult with the Minister for Land Information to co-ordinate these bids.

Review

- 33 It would be appropriate to review the Crown entity after a reasonable period to ascertain its effectiveness and whether there is still a need for such an organisation. I consider that it will require a period of 10 years for the new entity to establish itself as an effective organisation and deal with a significant proportion of the access issues. A review would be appropriate after 10 years of operation.

Consultation

- 34 The State Services Commission, the Treasury, Te Puni Kōkiri, the Departments of Conservation, Land Information, Internal Affairs, and the Ministry for Culture and Heritage have been consulted in the preparation of this paper. Sport and Recreation New Zealand has also been consulted.
- 35 Te Puni Kōkiri has noted the need for ongoing Māori representation on the Board of the proposed Crown entity.
- 36 I have consulted the Minister of State Services about the recommendation to confirm the organisational structure.

Human rights

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

Legislation

- 38 Legislation will be required to establish the new Crown entity. The legislation required will not be complex, because as much reliance as possible will be placed on the generic provisions for Crown agents in the Crown Entities Act 2004. The New Zealand Walkways Act 1990 will need to be modified as at present its administration is tied by statute to Conservation Boards, the New Zealand Conservation Authority and the Director-General of Conservation. The compliance and enforcement provisions of the New Zealand Walkways Act will need to be brought up to date, and consideration will need to be given to clarifying the way in which unformed legal road can be designated as walkway. It is likely that this statute will need numerous technical changes that will best be achieved by re-enacting it in a somewhat simplified form.
- 39 A bid for a legislative priority will be made for the 2008 legislative programme. I propose that the Committee invite me to issue drafting instructions for a Bill. The level of stakeholder goodwill for this policy should facilitate the legislative process.

Regulatory Impact Analysis

- 40 A regulatory impact analysis has been made by MAF. It has concluded that any impact of the proposed walking access legislation on economic growth will be trivial. The proposed legislation contains no mandatory access

requirements. All new access over private land is to be by negotiation and agreement. MAF has prepared a Regulatory Impact Statement which is attached to this report.

Publicity

- 41 There is a high level of stakeholder interest in the final form of the proposed access organisation. If the Committee agrees with the recommendations in this paper I propose to release a media statement on the form of a new access agency, and the intention to draft legislation and introduce a Bill.

Recommendations

- 42 I recommend that the Committee:

- 1 **note** that I was invited by the Cabinet Policy Committee, in consultation with the Minister of State Services, on 15 August 2007 to report back by 5 December 2007 on several unresolved matters relating to the implementation of the policies agreed to at that meeting (POL Min (07) 18/20);

New access agency

- 2 **confirm** its decision in principle to establish a new Crown entity for walking access;
- 3 **note** that I have previously indicated that I intend the Walking Access Advisory Board to become the establishment board for the new Crown entity;
- 4 **agree** that Māori representation will be an ongoing requirement of the new Crown entity's board;
- 5 **confirm** the functions of the Crown entity as follows:
 - provision of national leadership, including a national strategy, and co-ordination of access among key stakeholders and relevant central and local government organisations;
 - the provision of impartial and robust advice on access;
 - local/regional leadership and co-ordination to help local groups with their access issues;
 - mediation of disputes over walking access issues, including the ability to initiate negotiations;
 - the reference of disputes about legal access to an appropriate authority;

- the creation and administration of walkways made under the Walkways Act 1990, with planning and supervision focused at a local level;
- the establishment and maintenance of a public access mapping database;
- administration of a contestable fund for the purpose of negotiating walking access either under the provisions of the Walkways Act 1990 or new or other existing legislation;
- the receipt and management of private funding contributions (including sponsorships) for the promotion of walking access;
- research, education and participation in external access-related topics and programmes; and
- the development, promotion and maintenance of a code of responsible conduct.

6 **confirm** that the Crown entity be empowered to:

- consider all forms of access, in consultation with relevant organisations (there are efficiencies in an access organisation dealing with all forms of access), but with walking access as its priority area of concern; and
- acquire access over private land and fund the acquisition of such rights.

Monitoring department

7 **agree** that the monitoring department for the Crown entity should be the Ministry of Agriculture and Forestry;

8 **agree** that the effectiveness and need for a separate access organisation be reviewed after a period of ten years following the enactment of the legislation;

Legislation

9 **confirm** that operational responsibility for the New Zealand Walkways Act 1990 or legislation replacing that Act, be transferred to the Crown entity and that the administration of this legislation be transferred to the department that supports the Minister responsible for the Crown entity;

10 **agree** that the provisions of the New Zealand Walkways Act 1990 be re-enacted with appropriate modifications including updating its compliance and enforcement provisions;

- 11 **agree** that the walking access Crown entity be required to work with Sports and Recreation New Zealand to ensure walking access and outdoor recreation policy and implementation are aligned and coordinated;

Financial implications

- 12 **note** that \$1.894 million has been provided in Vote Agriculture for 2007/08 and outyears for walking access;
- 13 **note** that I propose to seek approval for operating expenditure for the Crown entity of [DELETED: BUDGET SENSITIVE] for 2008/09 and outyears as part of the 2008 Budget process (in substitution for the present allocation of \$1.894 million);
- 14 **note** that I propose to seek funding in the 2008 Budget process for the walking access contestable fund [DELETED: BUDGET SENSITIVE] for each of the 2008/09 and 2009/2010 years;
- 15 **agree** that there should be a review of the requirements for the contestable fund subsequent to 2009/10 taking into account the experience and view of the walking access organisation;
- 16 **note** that the Minister for Land Information proposes to seek new funding in the 2008 budget for funding of new walking access over Crown pastoral lease land;
- 17 **note** that I will co-ordinate with the Minister of Land Information over the relationship between the contestable fund and his proposal;
- 18 **note** that I propose to submit a New Initiatives Bid for funding the Crown entity and the contestable fund that it will administer for the amounts noted in recommendations 13 and 14 above;

Legislative priority

- 19 **note** that, subject to approval of the foregoing recommendations, I propose to seek a legislative priority in early 2008 for a walking access Bill;
- 20 **invite** the Minister for Rural Affairs to issue drafting instructions for a walking access Bill;

Publicity

- 21 **invite** the Minister for Rural Affairs to announce the decisions in this paper.

Hon Damien O'Connor

Minister for Rural Affairs

/ / 2007