
From: Bridget McCulloch-8127 <Bridget.McCulloch@marlborough.govt.nz> on behalf of Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>
Sent: Tuesday, 8 April 2014 3:28 pm
To: Chris Tonkin
Subject: Teme - section 9(2)(a)
Attachments: Teme-Email-TQu.pdf; Teme Access

section 9(2)(a) rang me as you had advised him to make further contact with me, and then sent an email which I see was copied in to you.

I **attach** a copy of my email to you of 6 September 2012 which was the last action Council has taken.

I've also sent an email to section 9(2)(a) which is **attached** identifying Council's position.

Tony Quirk

District Secretary

Marlborough District Council

Phone: +64 3 520 7400

Fax: 03 520 7496

Email: tony.quirk@marlborough.govt.nz

15 Seymour Street, PO Box 443, Blenheim 7240, New Zealand

Web: <http://www.marlborough.govt.nz>

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From: Bridget McCulloch-8127 <Bridget.McCulloch@marlborough.govt.nz> on behalf of Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>
Sent: Tuesday, 8 April 2014 3:27 pm
To: section 9(2)(a)
Subject: Teme Access

I refer to your email of 8 April 2014.

The issue of continuity of access in that area was raised by the NZ Walking Access Commission and was also discussed with a representative of the owners.

The difficulty, as I explained to you, is that the information given to us was that there was a gorge and parts where the road has slipped. There was, therefore, a break in continuity of road access.

The owner's representative stated that he was not interested in allowing access across his private property in order to bridge the gap. I do note a comment made by the owner's representative that anyone wanting continuity of access would need a 'magic carpet' to bridge the gap that exists based on the information he provided.

That position was advised to NZWAC back in September 2012 who indicated they would check it out since we had exhausted the options available to us.

I pointed out, in response to your question about whether there had been any check made of the assertions conveyed by the owner's representative, that obviously the only way to confirm the position one way or the other would be to have the access road surveyed. Council could not justify the survey cost. If we looked to all areas where there are potential access issues, Council would expend a considerable amount of ratepayer money simply getting surveys to double check where legal roads exist, or in this case where there may be a break in the legal road as alleged by the owner's representative.

I regret we are not able to do anything further.

Tony Quirk

District Secretary

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15 Seymour Street, PO Box 443, Blenheim 7240, New Zealand

Web: <http://www.marlborough.govt.nz>

From: Chris Tonkin
Sent: Thursday, 10 April 2014 9:08 am
To: 'Tony Quirk-8077'
Cc: mflynn@doc.govt.nz; Ric Cullinane (ric.cullinane@walkingaccess.govt.nz);
section 9(2)(a)
Subject: RE: Teme - section 9(2)(a) NZWAC case #583 & 2255
Attachments: Teme River snip.JPG

'Morning Tony,

Thank you for your note re section 9(2)(a) and copy of advice to him that "Council is unable to do anything further."

As you might recall this issue was initially raised with the Commission in 2011.

At that time both the Department of Conservation and Marlborough police were keen to see issues around public access to public land via Teme River resolved.

Beau Webster of Marlborough police and I attended a meeting with representatives of the land owners at which there was an undertaking to provide both Council and the Commission with GIS information to substantiate an alleged 'gap' in public access. While nothing further has been heard from the landowners information was received by email from Council dated 6/09/2012 .

This information prompted DoC to instigate a GPS survey to assess the existence of contiguous public access in the area where it is alleged a 'magic carpet' is required, because at this point there is both Council owned ULR and DoC administered marginal strip.

For various reasons, mostly to do with the recent DoC review, that survey did not eventuate, however DoC now report a 'significant increase in interest for access to public conservation land by this route, as expressed to you by section 9(2)(a)

For your information, as of yesterday DoC (South Marlborough) staff informed me they intend to accord priority to resolving the issue.

The attached snip would indicate little potential for disagreement about the existence and status of legal road and marginal strip adjoining Temeriver Ltd land other than the purported issue around 'magic carpet corner.' For this reason DoC has advised an intention to focus their investigation on this point in consultation with the adjoining landowners and with assistance and advice from the Commission if required.

In the same way that DoC has a mandate to uphold the ability of the public to use marginal strip I am sure Council will have an interest in upholding its responsibility for preserving public access via legal road. Since there is a common interest in the outcome I expect DoC will keep you informed on developments.

Kind Regards

Chris Tonkin
Regional Field Advisor,
N.Z. walking access Commission
section 9(2)(a)

From: Bridget McCulloch-8127 [mailto:Bridget.McCulloch@marlborough.govt.nz] **On Behalf Of** Tony Quirk-8077
Sent: Tuesday, 8 April 2014 3:28 p.m.
To: Chris Tonkin
Subject: Teme - section 9(2)(a)



purple = legal road, red = marginal strip

magic carpet corner

public conservation land

From: Bridget McCulloch-8127 <Bridget.McCulloch@marlborough.govt.nz> on behalf of Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>
Sent: Wednesday, 7 May 2014 12:03 pm
To: Chris Tonkin
Subject: Teme

I refer to your email of 10 April 2014 and make some comments:

You referred to Council's interest in upholding responsibility for preserving public access via legal road. That is fine as a statement but when one deals with specific cases, our interest very much depends on the impact on Council, particularly any cost impact. Council doesn't have a bottomless pit of money and when expenditure is sought for different activities, one has to balance demand against available funds and from there allocate priorities.

On top of that we have expectations from ratepayers and indeed from Central Government that rates increases are kept to a minimum. This often means demands by some simply don't match expectations by the majority in terms of any impact on rates.

In this particular case I have had a discussion with Beau Webster.

I know he was going to have a chat with Dave Hayes at DOC. I did query if there is seen to be a public demand for access to the DOC reserve, should there be some check to see what alternate options there might be to ensure rights of public access without on-going hassles triggered by trying to deal with this particular legal road which seems to have a problem at one point on the access way.

It may be a negotiated access across other adjacent land might be a better way forward. That could be a Resource Management Act right-of-way. The benefit is that terms can be written in to the right restricting vehicular access and also making provision for the ability of the landowner to restrict access at certain times through a farming year. I don't know whether it is feasible but Beau mentioned it had been discussed at a meeting held some time ago.

The prompt for Beau's visit to me was that an individual had attempted to gain access with a vehicle over the 'Teme' land. The individual has been trespassed. That person admitted he was trying to 'push the envelope' to make a point. As Beau mentioned, and I agreed, that is not the way forward when we have difficulties with the property owners in question as it is and all the individual is doing is to harden their resolve to fight any access where there is the potential for people to move off legal road and on to private property.

It is for that reason that I float the concept of seeing if there is an alternative which could be more easily put in place rather than expend a lot of time and potential costs seeking to fight a landowner who is resourced and prepared to 'go into battle'.

I thought it important to pass on the discussion I had with Beau and also to point out the situation regarding Council's interest or otherwise in access matters in terms of any cost implication.

Tony Quirk

District Secretary

Marlborough District Council

Phone: +64 3 520 7400

Fax: 03 520 7496

Email: tony.quirk@marlborough.govt.nz

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From: Chris Tonkin
Sent: Friday, 16 May 2014 9:25 am
To: Tony Quirk-8077 (Tony.Quirk@marlborough.govt.nz); beau.webster@police.govt.nz; mflynn@doc.govt.nz
Subject: Teme survey info
Attachments: Teme River spacial.pdf; teme snip.JPG; teme survey plan.pdf

'Morning all,

As requested the Commission's Operations Adviser has researched survey information for Teme River as below;

Attached is a survey plan and spacial view of legal road and marginal strip adjoining Section 4 Blk IV owned by The Temeriver Ltd. (the latter shaded red in attached 'Teme snip')

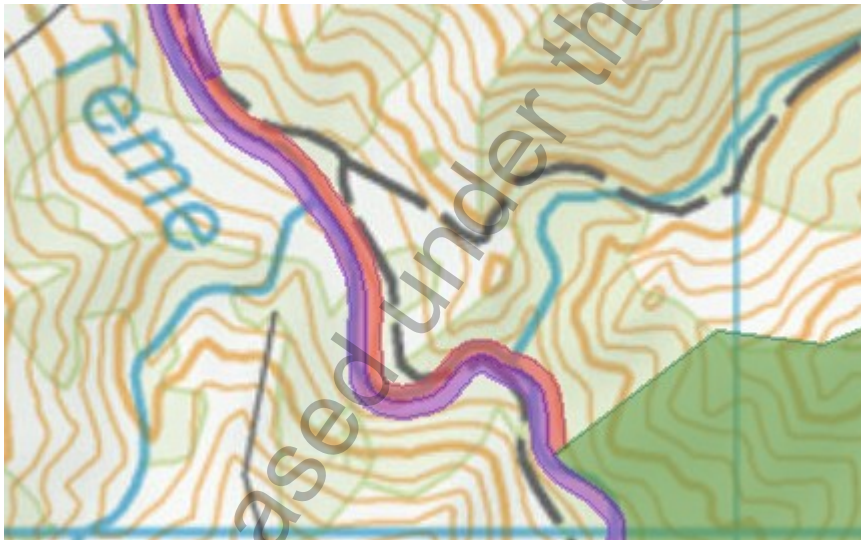
This documentation serves to confirm the location of surveyed legal road linking with marginal strip adjoining Teme River, thereby providing legal public access to DoC managed public land.

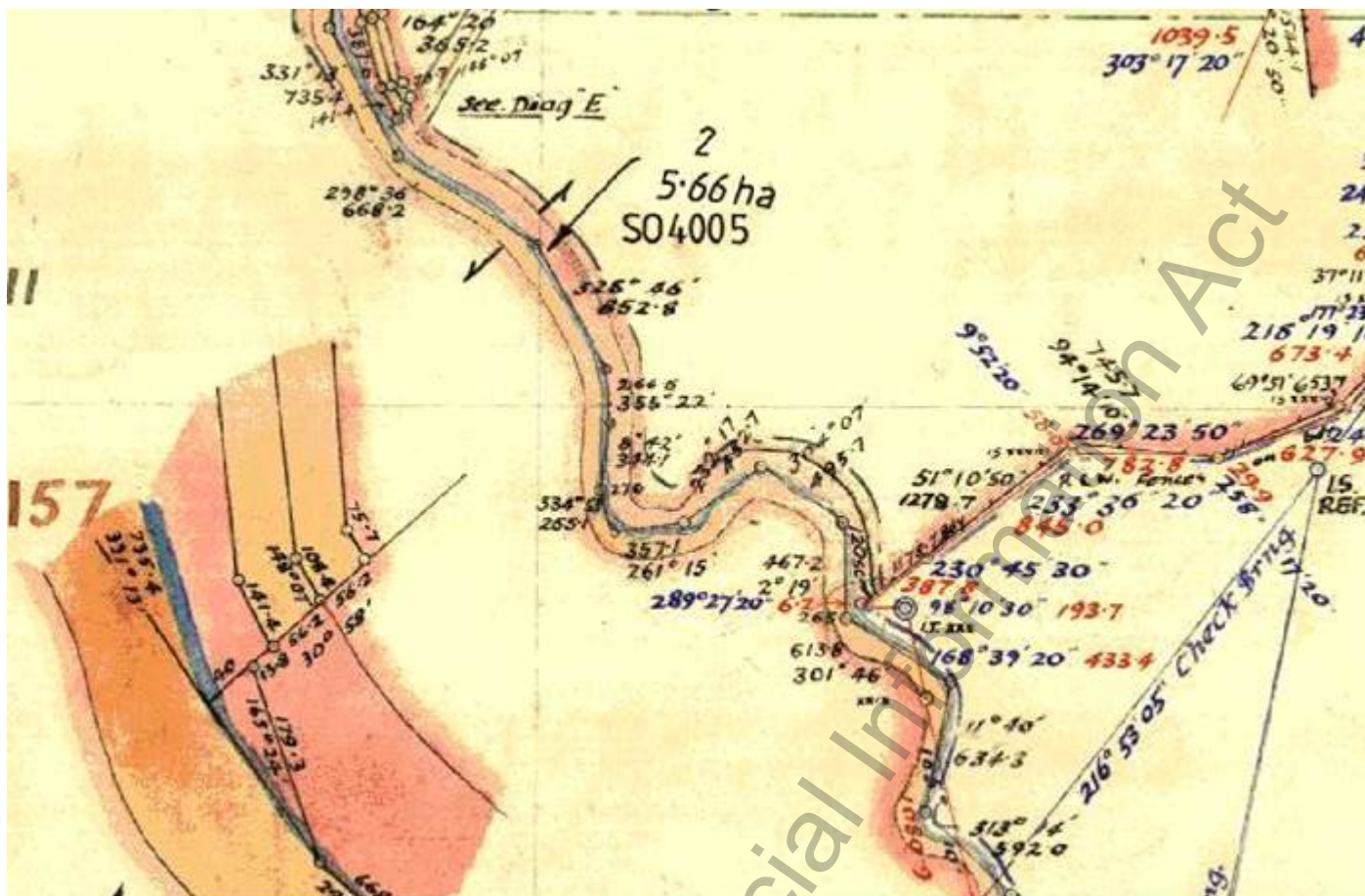
It will be noted that the piece of land that has come to be dubbed 'magic carpet corner' (see below) comprises a 20m strip on both sides of the river, marginal strip on the TR and unformed legal road on the TL.

North (downstream) of this point legal access adjoins the river in the form of a 20m strip either side, comprising legal road or marginal strip, and eventually links with Avon Valley Road.

As previously observed DOC manages the marginal strip while management of the road is a MDC responsibility pursuant to provisions of the Local Government Act.

Should there be any queries or further information required I will endeavour to oblige.





Regards

Chris Tonkin
Regional Field Advisor,
N.Z. walking access Commission
section 9(2)(a)

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www.walkingaccess.govt.nz
www.wams.org.nz

From: Chris Tonkin
Sent: Friday, 13 March 2015 11:07 am
To: Tony Quirk-8077 (Tony.Quirk@marlborough.govt.nz); beau.webster@police.govt.nz; mflynn@doc.govt.nz
Subject: FW: Teme access
Attachments: Teme River spacial.pdf; teme snip.JPG; teme survey plan.pdf

'Morning all,

As expected this issue has re-surfaced in the form of yet another enquiry regarding legal access up Teme River to DoC managed public land.

The survey plan provided to recipients of this email on 16th May 2014 confirms the location of legal road linking with marginal strip, along with confirmation of the respective management agencies – information that was requested of NZWAC by NZ Police. This led to further queries from Beau Webster 17/05, responded to as follows;

- The public has the common law right of passage along any road whether it is formed or not.
- Unformed legal roads are no different in law from formed public roads. That is, the public has the right to use them on foot, on horseback or in vehicles without hindrance from the adjoining landowners or anyone else.
- From a practical perspective the precise location of road boundaries may not be critical. An acknowledgement of the existence of a road both by an adjoining landowner and the public may be sufficient to reach a practical access solution.
- If landowners wish to keep people off their property they may define and fence their boundaries or place signposts indicating boundaries.
- In terms of protecting safety and convenience of the public s353 of the Local Govt. Act 1974 empowers councils to require an adjoining landowner to fence road boundaries.
- It is the duty of Councils (as road owners) to keep roads free of obstructions. Incidentally it is also an offence under the Summary Offences Act 1981 (s22) to obstruct a public way, so in some circumstances there may be a role here for police.

The last file entry from DoC is a statement 09/04/14 they *"intend to accord priority to resolving the issue"*

Marlborough DC (9/04/2014) in its response to complainant **section 9(2)(a)** advised; *" in response to your question about whether there had been any check made of the assertions conveyed by the owner's representative, that obviously the only way to confirm the position one way or the other would be to have the access road surveyed. Council could not justify the survey cost. If we looked to all areas where there are potential access issues, Council would expend a considerable amount of ratepayer money simply getting surveys to double check where legal roads exist, or in this case where there may be a break in the legal road as alleged by the owner's representative. I regret we are not able to do anything further."*

The Council correspondence obviously pre-dated the survey plan subsequently provided to all parties confirming the road parcel boundaries.

The parties capable of initiating the actions necessary to resolve this issue are DoC as managers of marginal strip and Marlborough District Council which, pursuant to part 21 of the LGA 1974, is obliged to see that the right of public passage on the road is preserved.

In light of the potential for unlawful behaviour NZ Police also have compelling reasons for wishing to see matters resolved.

The NZ Walking Access Commission's role is to provide advice and facilitation services upon request.

Given that access to public land via Teme valley is clearly in demand may I suggest that DoC and Marlborough DC accord priority to addressing the issues that are currently preventing it.

I suggest the focus should be on identifying the best means to provide practical and enduring access to public land, having regard for the reasonable concerns of adjoining landowners.

As previously advised the Commission's services are available upon request.

Regards to all,

Chris Tonkin
Regional Field Advisor,
N.Z. walking access Commission
section 9(2)(a)

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www.wams.org.nz

From: Chris Tonkin
Sent: Friday, 16 May 2014 9:25 a.m.
To: Tony Quirk-8077 (Tony.Quirk@marlborough.govt.nz); beau.webster@police.govt.nz; mflynn@doc.govt.nz
Subject: Teme survey info

'Morning all,

As requested the Commission's Operations Adviser has researched survey information for Teme River as below;

Attached is a survey plan and spacial view of legal road and marginal strip adjoining Section 4 Blk IV owned by The Temeriver Ltd. (the latter shaded red in attached 'Teme snip')

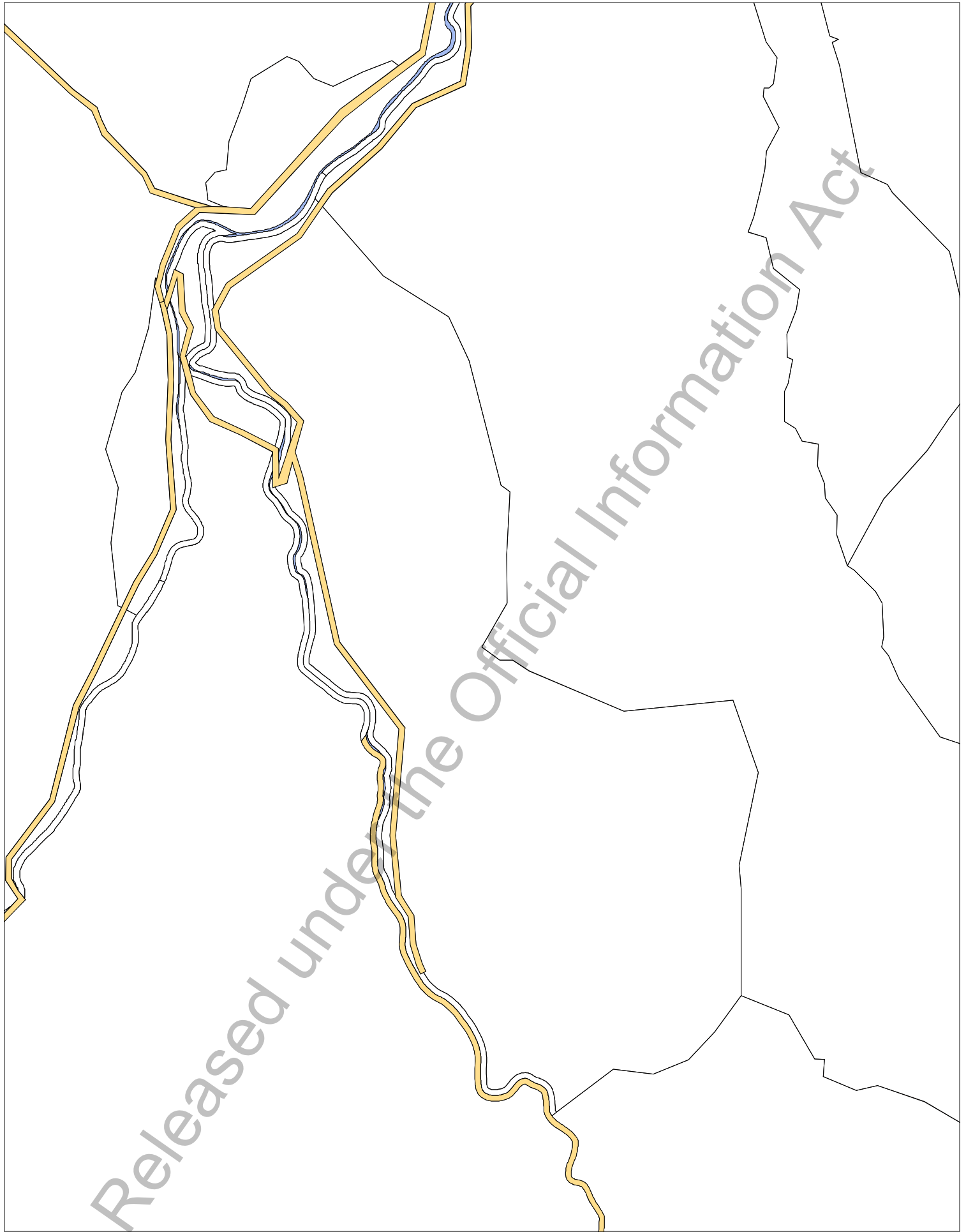
This documentation serves to confirm the location of surveyed legal road linking with marginal strip adjoining Teme River, thereby providing legal public access to DoC managed public land.

It will be noted that the piece of land that has come to be dubbed 'magic carpet corner' (see below) comprises a 20m strip on both sides of the river, marginal strip on the TR and unformed legal road on the TL.

North (downstream) of this point legal access adjoins the river in the form of a 20m strip either side, comprising legal road or marginal strip, and eventually links with Avon Valley Road.

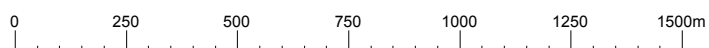
As previously observed DOC manages the marginal strip while management of the road is a MDC responsibility pursuant to provisions of the Local Government Act.

Should there be any queries or further information required I will endeavour to oblige.



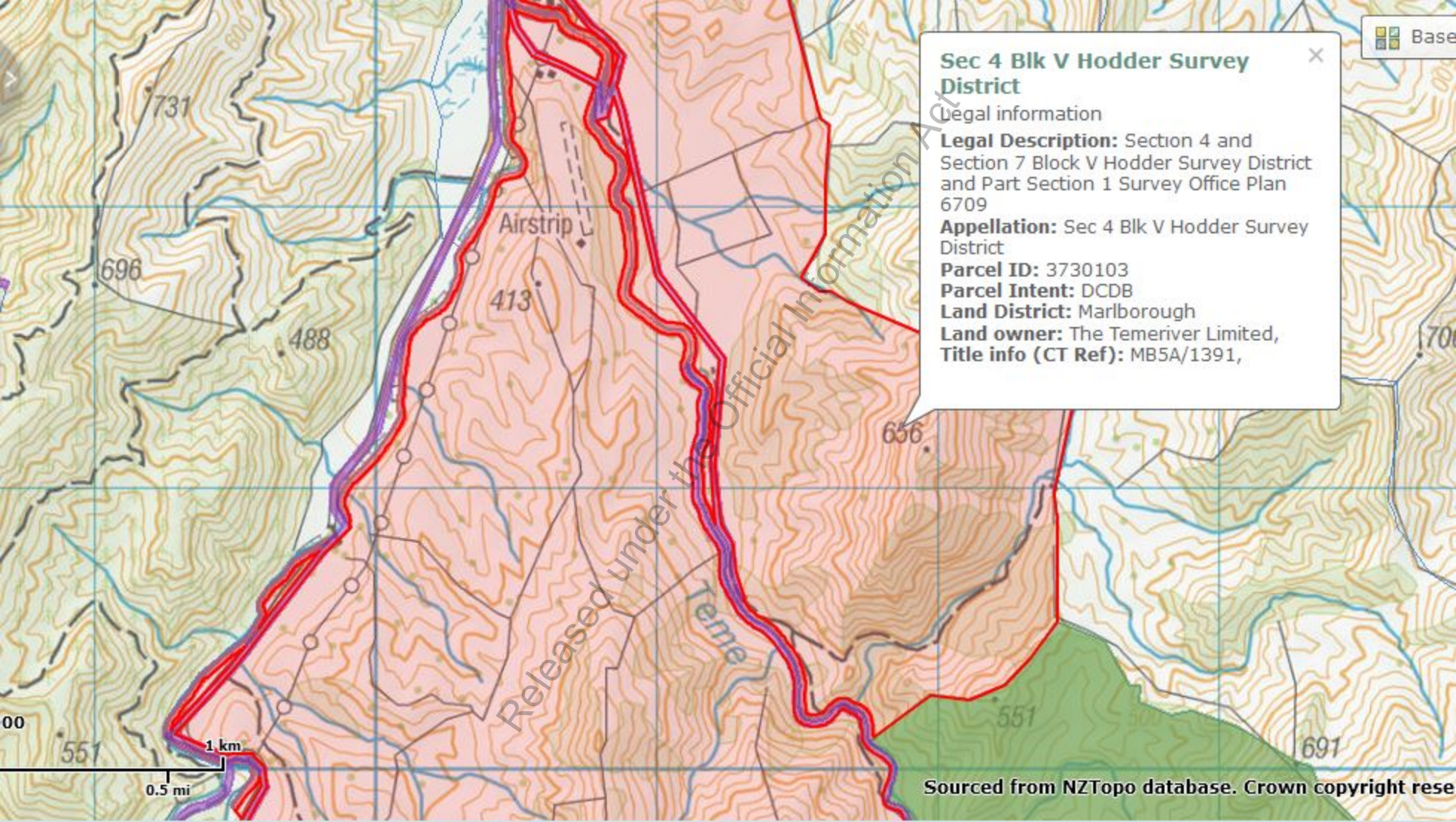
Spatial Map Print

Scale 1 : 17000



This data has been compiled from official records. Location of boundaries requires an analysis of all relevant information in compliance with the Survey Regulations. Attribute data requires an analysis of the appropriate legal record.





Sec 4 Blk V Hodder Survey District

Legal information

Legal Description: Section 4 and Section 7 Block V Hodder Survey District and Part Section 1 Survey Office Plan 6709

Appellation: Sec 4 Blk V Hodder Survey District

Parcel ID: 3730103

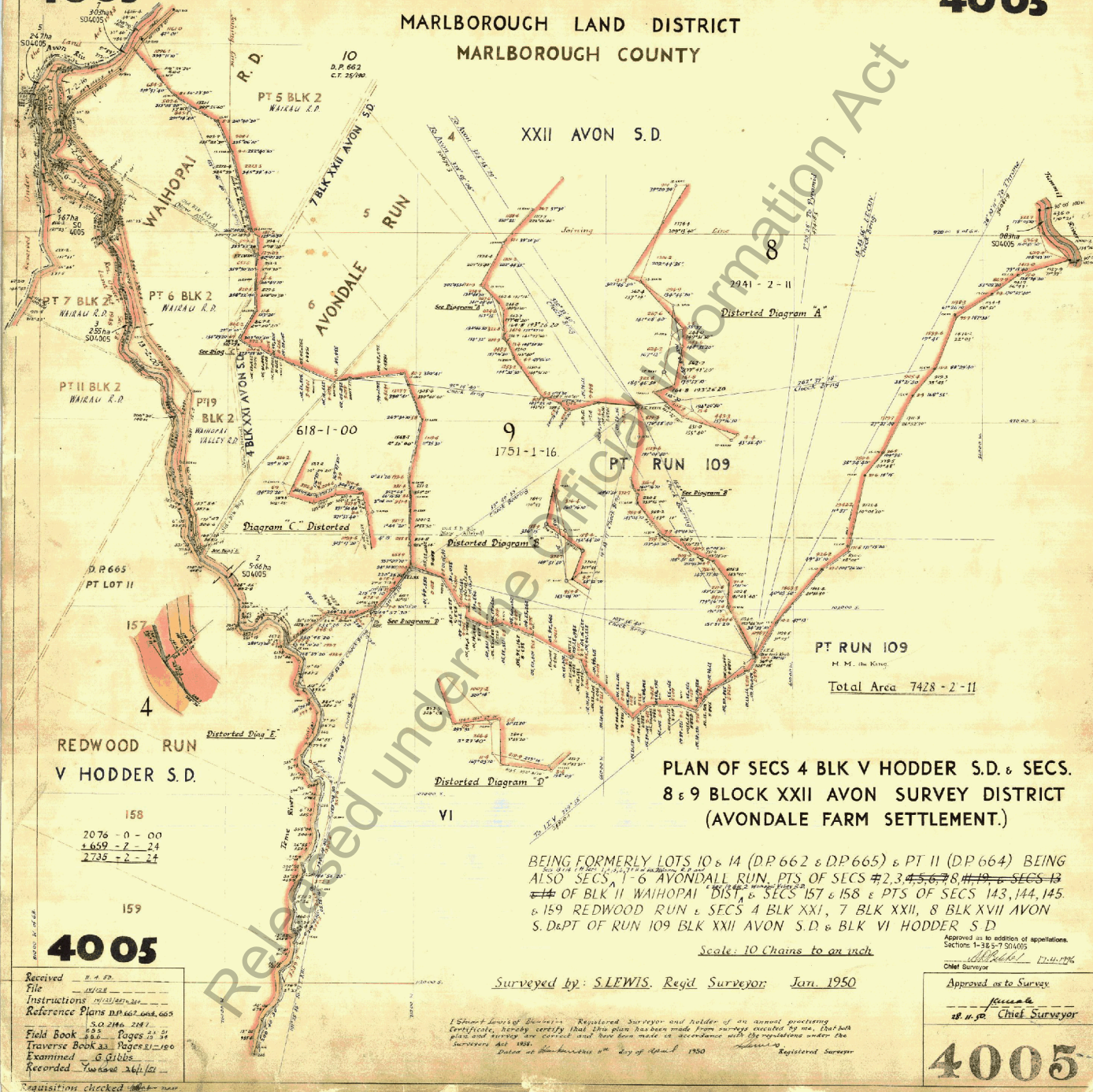
Parcel Intent: DCDB

Land District: Marlborough

Land owner: The Temeriver Limited,

Title info (CT Ref): MB5A/1391,

40 05



Received B. A. 52
File 11/128
Instructions 11/23/57 p. 264
Reference Plans D.P. 662 664 665
S.O. 2146 2147
Field Book 205 Pages 15 51
206
Traverse Book 33 Pages 21-190
Examined G Gibbs
Recorded Two time 2/6/51

Surveyed by: S. LEWIS. Regd Surveyor: Jan. 1950

I Stuart Lewis of Barchin Registered Surveyor and holder of an annual practicing Certificate, hereby certify that this plan has been made from surveys executed by me, that both plan and survey are correct and have been made in accordance with the regulations under the Surveyors Act 1958.

Dated at Wankar this 10th day of April 1950

Stuart Lewis Registered Surveyor

Approved as to addition of appellations.
Sections 1-3 & 5-7 S04005
J. B. Baker 11.4.1996
Chief Surveyor

Approved as to Survey

 28. 11. 50. Chief Surveyor

4005

RADICH & LAW

BARRISTERS AND SOLICITORS

DATE: 3 June 2015

TO: NZ Walking Access Commission
WELLINGTON

Attention: Chris Tonkin

By email

CC: Marlborough District Council

Attention: Tony Quirk

FROM: Peter Radich

RE: TEME RIVER ACCESS

1. We act for Marlborough District Council which has referred this issue to us. Essentially, Council wants to know what its obligations are in this situation.

2. As we understand the position:

- There is a DOC reserve in the upper reaches of the Teme River;
- There is a private property owned by a company between the DOC reserve and areas to which the public has access lower down the river;
- Between the areas lower down the river where the public has access and the DOC reserve, there is a paper road;
- There is significant public pressure for access to be gained from the lower areas to the DOC reserve;
- The only means by which public access could be legally taken would be along the unformed paper road;
- However, practical access along the unformed road is not possible as sections have fallen away and cannot be traversed.

3. The landowners in the intermediate area are apparently resistant to allowing public access over their land. If we are correct in assuming that practical access over the unformed road is not possible then, the reality is that there is no practicable public access to achieve the objective.

4. As you know, Council is generally supportive of the concept of public walking access to areas of public interest subject obviously to budgetary and practical considerations. Here, this does not seem to be achievable with things as they stand.

PJR-022095-821-I-V1

21 Bells Road, RD2, Blenheim 7272. PO Box 842, Blenheim 7240, Marlborough, New Zealand.
T: +64 3 577 8450 F: +64 3 577 8451 E: info@radichlaw.co.nz W: www.radichlaw.co.nz

Peter Radich PARTNER
ONZML LLB

Miriam Radich PARTNER
LLB (Hons) LL.M (Duke) Attorney at Law (New York)

Claire McKendry ASSOCIATE
LLB BSc

Luke Radich ASSOCIATE
LLB (Hons) BA

5. We have advised Council that we do not think that it has any further obligations. It does not have to try to restore the section of unformed road which has fallen away. It does not have to initiate the taking of other land in replacement. It does not have to survey the road. If however you think we are wrong in this advice we would be pleased to receive your comments and give them careful consideration.

Yours sincerely



P J Radich

Email address: peter@radichlaw.co.nz

Released under the Official Information Act

From: Chris Tonkin
Sent: Monday, 8 June 2015 12:06 pm
To: 'nicki@radichlaw.co.nz'; Tony Quirk-8077 (Tony.Quirk@marlborough.govt.nz)
Cc: Ric Cullinane (ric.cullinane@walkingaccess.govt.nz)
Subject: Teme River access
Attachments: teme survey detail.docx

Good afternoon Peter and Tony,

Peter, thank you for your letter of 3 June 2015 outlining your understanding of the situation regarding Teme River access, and MDC's obligations in respect of the unformed legal road.

The Commission largely agrees with your understanding of the situation and your advice regarding MDC's obligations, but with three points of clarification.

Legal access

Ref Peter's 5th bullet point at paragraph 2; legal public access is provided by surveyed unformed legal road and marginal strip. (refer attachment) While the marginal strip is not Council's responsibility it is important to note that public access is not solely reliant upon the unformed road.

Practical access

It is not confirmed that practical walking access along the unformed road is impossible, and I understand that this assumption is based solely on the advice of the adjoining landholder. Given the combination of marginal strip and unformed road at the point where it is alleged the "road has fallen away" it seems likely that walking (or scrambling) access would be feasible. Evidence for this is suggested in an email from Beau Webster of Blenheim police to the writer on 3/03/15 when he noted "I have been asked many times about this road, in which I tell people that they do have a right to access it, although I normally tell them to do so on foot." Upon being provided with this advice the last enquirer to the Commission confirmed he was able to access the area on foot without any difficulty.

Council's obligations

We understand Council has no obligation to form or restore the road where sections have fallen away, but it does have the obligation to ensure a right of public access on the road. This means Council has the responsibility to ensure public access is not restricted by locked gates or other obstructions, and to require the adjoining landholder to remove or repair obstructions that the adjoining landholder is or has been responsible for.

I appreciate that Council is supportive of the concept of public walking access, and the reality that providing practical access is subject to budgetary considerations. It is clearly Council's responsibility to balance available resources against public and ratepayer requirements in an environment where the available resources never meet the demands.

In this case, we submit Council's obligations with respect to the unformed legal road remain those of ensuring the rights of public access, independently of whether the access is practical over one section of the road.

Access to public land via Teme valley is clearly in demand and both police and the Department of Conservation have indicated a willingness to participate in any process that will result in a practical and enduring arrangement, having regard for the reasonable concerns of adjoining landowners.

As previously advised the Commission offers its assistance to that end if required.

Yours sincerely,

Chris Tonkin
Regional Field Advisor,
N.Z. walking access Commission
section 9(2)(a)

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www.wams.org.nz

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RADICH LAW

BARRISTERS AND SOLICITORS

DATE: 22 June 2015
TO: NZ Walking Access Commission

Attention: Chris Tonkin

CC: Marlborough District Council

Attention: Tony Quirk

Both by email

FROM: Peter Radich

RE: **TEME RIVER ACCESS**

1. Chris, thank you for your comprehensive email 8 June 2015.
2. We note what you say about physical access possibly being available but as far as we know, it is not.
3. Have you or anybody associated with the Commission been there and if so do you have any photographs. In the absence of some evidence that walking or scrambling access is possible, there is little more that Council is able to do. Certainly, if there is a physical gap, Council would not be inclined to do anything to bridge that physical gap. What we think is the position is that physical access along the public route is not possible and those wanting to go along the route then move on to private land which they are not entitled to do.
4. Could you please come back to us with such evidence as you have.

Yours sincerely



P J Radich

Email address: peter@radichlaw.co.nz

PJR-022095-821-3-V1

21 Bells Road, RD2, Blenheim 7272. PO Box 842, Blenheim 7240, Marlborough, New Zealand.
T: +64 3 577 8450 F: +64 3 577 8451 E: info@radichlaw.co.nz W: www.radichlaw.co.nz

Peter Radich PARTNER
ONZM LLB

Miriam Radich PARTNER
LLB (Hons) LLM (Duke) Attorney at Law (New York)

Claire McKendry ASSOCIATE
LLB BSc

Luke Radich ASSOCIATE
LLB (Hons) BA

From: Chris Tonkin
Sent: Monday, 6 July 2015 11:36 am
To: 'Nicki Lawson'
Cc: Tony Quirk-8077
Subject: RE: Teme River Access case 583

Peter / Tony,

Tony; further to your memo of 22 June noting uncertainty about "physical access" at Teme River. With respect, we suggest the practicality of access is not Council's concern; rather the issue is about council protecting the public right of access by upholding its statutory obligation not to allow modifications to the legal road, locked gates or other obstructions.

In respect of marginal strip the Department of Conservation has undertaken to locate boundaries by GPS.

DoC staff have previously accorded priority to a GPS survey but I have had no recent indication of when it will occur.

As previously noted, as with other Marlborough cases involving the public right of access to public land this matter is unlikely to go away and needs to be resolved.

The Commission's experience elsewhere indicates that the exact location of public access is not necessary for dispute resolution. Rather, once parties acknowledge the existence of legal access there are usually options for a practical and enduring outcome that has regard for the reasonable concerns of affected parties.

We reiterate that this case is ripe for an on-site inspection / discussion with affected parties, namely the Council, Department of Conservation, N.Z. Police and the landowners adjoining legal road and marginal strip.

The Commission is happy to assist to that end if requested.

Yours sincerely,

Chris Tonkin
Regional Advisor

RADICH*~~W~~LAW

BARRISTERS AND SOLICITORS

DATE: 4 August 2015

TO: NZ Walking Access Commission

Attention: Chris Tonkin

CC: Marlborough District Council

Attention: Tony Quirk

Both by email

FROM: Peter Radich

RE: TEME RIVER ACCESS

1. Chris, we have received and considered your email 6 July 2015.
2. The situation we have is that there are private landowners who are particularly protective of their privacy and who are likely to be unwilling to allow any access unless it is a legal entitlement. They say that physical access along the legal route is impossible. Unless and until somebody can demonstrate that that is not the case they will continue to be unyielding. Council is reluctant to take the lead role and incur costs of survey and otherwise.
3. In these circumstances we should all wait until DOC has made the determinations as to where the boundary is.

Yours sincerely



P J Radich

Email address: peter@radichlaw.co.nz

PJR-022095-821-4-V1

21 Bells Road, RD2, Blenheim 7272. PO Box 842, Blenheim 7240, Marlborough, New Zealand.
T: +64 3 577 8450 F: +64 3 577 8451 E: info@radichlaw.co.nz W: www.radichlaw.co.nz

Peter Radich PARTNER
ONZM LLB

Miriam Radich PARTNER
LLB (Hons) LLM (Duke) Attorney at Law (New York)

Claire McKendry ASSOCIATE
LLB BSc

Luke Radich ASSOCIATE
LLB (Hons) BA

From: Chris Tonkin
Sent: Monday, 17 August 2015 11:35 am
To: 'Nicki Lawson'
Cc: Tony Quirk-8077 (Tony.Quirk@marlborough.govt.nz)
Subject: RE: Teme River Access

'Morning Peter,

Thank you for your memo of 4/08/15.

I have forwarded your suggestion onto DoC regarding the location of marginal strip boundaries and have asked for a likely time-frame for completion of the associated GPS survey, however I note from your memo that the landowners adjoining the legal road and marginal strip say that "physical access along the legal route is impossible."

This implies there might be recent survey information that other parties are not aware of, in which case the Commission would be happy to provide a view on whether further work is in fact necessary.

Regards
Chris Tonkin

From: Chris Tonkin
Sent: Monday, 24 August 2015 3:33 pm
To: 'Nicki Lawson'
Cc: Tony Quirk-8077
Subject: RE: Teme River Access

Peter,

Thank you for your memo advising there is no recent survey information at Teme River that you are aware of.

Upon receipt of your last memo;

1. I notified the Department of Conservation that Council, Marlborough police and adjoining landowners are awaiting it to complete the work necessary to establish the location of the marginal strip boundaries for which it has management responsibility.

2. Having provided advice and assistance to various parties as requested the Commission intends to close the case.

With kind regards

Chris Tonkin
Regional advisor

-----Original Message-----

From: Nicki Lawson [mailto:Nicki@radichlaw.co.nz]
Sent: Monday, 24 August 2015 2:17 p.m.
To: Chris Tonkin
Cc: Tony Quirk-8077
Subject: Teme River Access

Please find attached Memorandum from Peter Radich.

Regards

Nicki Lawson for P J Radich

Radich Law

21 Bells Road, PO Box 842, Blenheim, New Zealand