

Teme River field visit 2983

From: Penny.Wardle@walkingaccess.govt.nz

Sent: Thursday 8 November, 2018 04:13 pm

To: Jane Tito-7222 (Jane.Tito@marlborough.govt.nz) <Jane.Tito@marlborough.govt.nz>

CC: 'Kaye Mcllveney-7552' <Kaye.Mcllveney@marlborough.govt.nz>, Matt Flynn <mflynn@doc.govt.nz>

Subject: Teme River field visit 2983

Associations: 1686 Facilitate access - Teme River [1686]

Hi Jane, I was talking with Kaye who said you were hoping to arrange a field visit to the Teme. Matt Flynn from DOC would be happy to take you there for a look at what's proposed on the legal road and marginal strip. I would be interested to come too, if you were happy for that to happen.

Would you like me to arrange this? Or you could contact Matt directly.

Regards,

Penny Wardle,

Regional Field Advisor,

New Zealand Walking Access Commission | Ara Hikoī Aotearoa

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2983 MDC, DOC, Walking Access Commission visit to The Teme

From: Penny.Wardle@walkingaccess.govt.nz

Sent: Thursday 22 November, 2018 04:20 pm

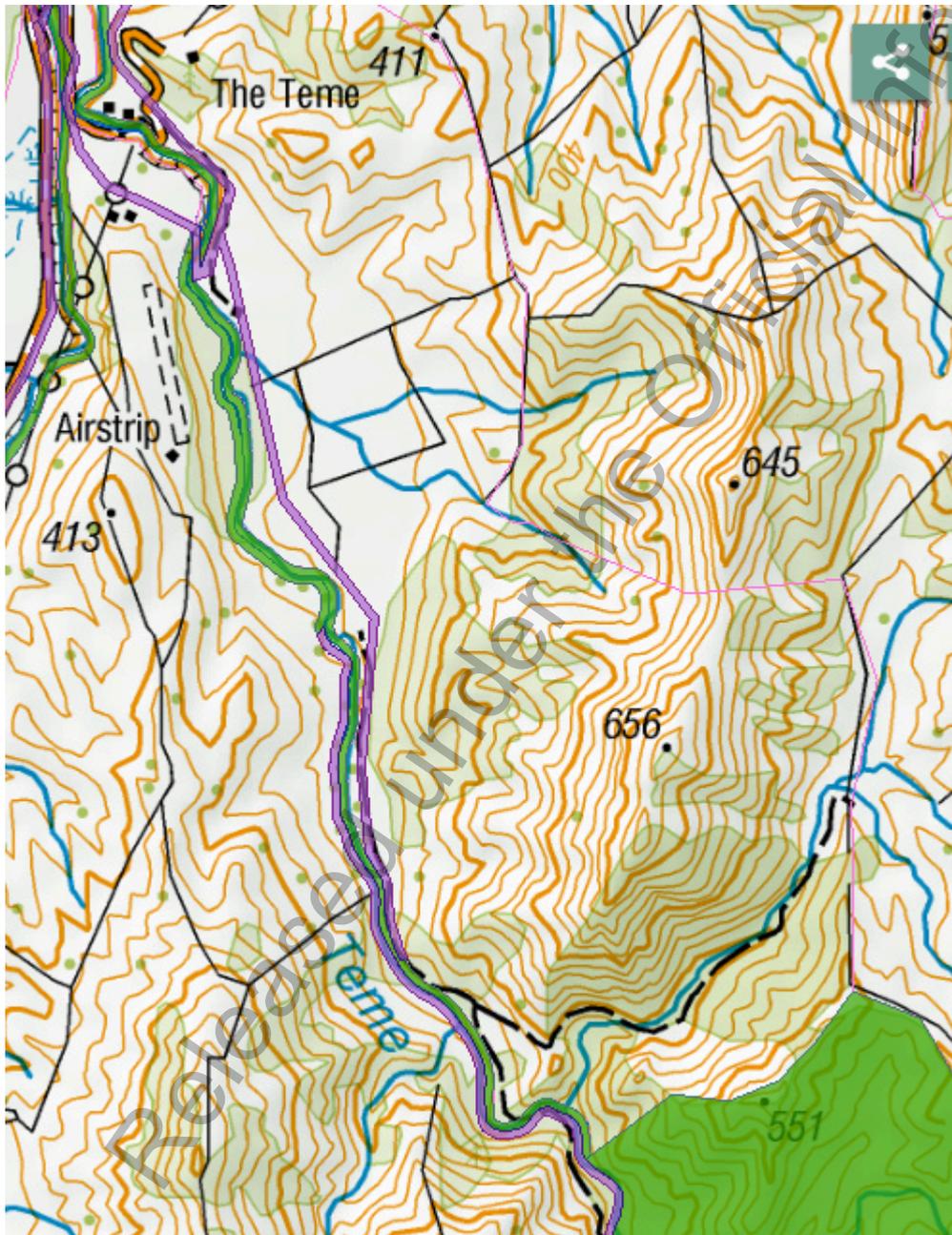
To: section 9(2)(a)

CC: Matt Flynn <mflynn@doc.govt.nz>, Jane Tito-7222 (Jane.Tito@marlborough.govt.nz) <Jane.Tito@marlborough.govt.nz>, darren@section 9(2)(a)

Subject: 2983 MDC, DOC, Walking Access Commission visit to The Teme

Associations: 1686 Facilitate access - Teme River [1686]

Hello section 9(2)(a), I have just come off the phone to Darren Clifford who I rang as a courtesy, to let him know that Matt Flynn of the Department of Conservation, Marlborough District Council Reserves and Amenities manager Jane Tito and myself will be making a field visit on unformed legal road and marginal strip adjoining The Teme on Wednesday next week (November 28). Darren asked me to let you know of our visit.



Regards,

Penny Wardle,

Regional Field Advisor,

New Zealand Walking Access Commission | Ara Hikoī Aotearoa

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RE: Teme access 2983 update requested

From: Jane.Tito@marlborough.govt.nz
Received: Thursday 26 September, 2019 10:52 am
To: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>, Linda Craighead-7656 <Linda.Craighead@marlborough.govt.nz>
Subject: RE: Teme access 2983 update requested
Associations: 1686 Facilitate access - Teme River [1686]

Hi Penny

We have not had any progress yet with this issue.

I will let you know when progress is made.

Thanking you in advance.

Jane

Jane Tito

Reserves and Amenities Manager

DDI: +64 3 520 7426

Phone: +64 3 520 7400

Mob: +64 21 985 150

Email: jane.tito@marlborough.govt.nz

Website: www.marlborough.govt.nz



From: Penny Wardle [mailto:Penny.Wardle@walkingaccess.govt.nz]
Sent: Thursday, 26 September 2019 10:29 a.m.
To: Jane Tito-7222; Linda Craighead-7656
Subject: Teme access 2983 update requested

Hi Jane and Linda, is there any update on the Teme landholder being required to remove obstacles to access, as below?
Thank, Penny Wardle

From: Penny Wardle
Sent: Wednesday, 11 September 2019 9:51 AM
To: Jane Tito-7222
Cc: 'Linda Craighead-8455'
Subject: Teme access 2983 update requested

Hi Jane, I have had a request from the Department of Conservation for an update on the Marlborough District Council's progress with requiring obstacles to be removed from the unformed legal road at The Teme. They are keen to progress access here and are having to deal with people encountering locked gates on this legal road.

Could you please advise of whether the Council has required the adjoining landholder to remove obstacles or if not, likely timeframes?

Regards,

Penny Wardle,

Regional Field Advisor,

New Zealand Walking Access Commission | Ara Hīkoi Aotearoa

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RE: Teme access to Fernygair Public Conservation Area 2983

From: Mark Wheeler-5030 <Mark.Wheeler@marlborough.govt.nz>

Received Tuesday 31 March, 2020 02:59 pm

To: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

CC: James Gilmour <jgilmour@doc.govt.nz>, Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>, Roy Grose <rgrose@doc.govt.nz>, Ric Cullinane <ric.cullinane@walkingaccess.govt.nz>, Phil Bradfield <pbradfield@doc.govt.nz>

Subject: RE: Teme access to Fernygair Public Conservation Area 2983

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Hi Penny.

I am well and hope you and your family are too.

Yes we are in uncharted territory dealing with such a virus.

I did make contact with Darren – not easy. He did say we could meet. He then sent through the questions Matt answered below.

I haven't had any further contact.

To be honest I just cannot do that right now.

Covid 19 response and recovery will be my priority for some time.

I suggest we review in another month?

Best wishes to all,

Mark.

Mark Wheeler

Chief Executive



Phone: 03 520 7400

Mobile: 021 587 802

Fax: +64 3 520 7496

15 Seymour Street, PO Box 443

Blenheim 7240, New Zealand

mark.wheeler@marlborough.govt.nz

www.marlborough.govt.nz

From: Penny Wardle [mailto:Penny.Wardle@walkingaccess.govt.nz]

Sent: Tuesday, 31 March 2020 2:42 p.m.

To: Mark Wheeler-5030

Cc: James Gilmour; Tony Quirk-8077; Roy Grose; Ric Cullinane; Phil Bradfield

Subject: Teme access to Fernygair Public Conservation Area 2983

Hello Mark, I appreciate that you may be busy due to the Covid-19 lockdown. However, when you have a moment could you please update me on whether you have gone back to Darren Clifford with a response to his questions.

You may be aware that Matt Flynn is no longer based in Marlborough, although he is still working for DOC. James Gilmour has picked up this case and DOC and the NZ Walking Access Commission would like to ensure that progress is made with opening up this public access to Fernygair Public Conservation Area including Lake Alexandra.

You suggested that there needs to be a win-win in this case. Darren Clifford is illegally blocking a public road leading to a difficult-to-access public conservation area with high recreational values. Any benefit to him would be in DOC's suggestion it could maintain the road to where it would build a track following marginal strip to Fernygair. This would clarify where people can and can't go, avoiding any confusion. Both DOC and the NZ Walking Access Commission have repeatedly offered to discuss whether Mr Clifford would prefer alternative access but he has refused to do this.

I hope you, family and friends are managing well during this challenging time.

Regards,



Penny Wardle,

Regional Field Advisor, Kaitohutohu ā-Rohe,

New Zealand Walking Access Commission | Ara Hīkoi Aotearoa

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From: Mark Wheeler-5030
Sent: Monday, 10 February 2020 12:04 PM
To: 'Matt Flynn' ; Tony Quirk-8077
Cc: Roy Grose ; Phil Bradfield ; Penny Wardle ; Ric Cullinane
Subject: RE: Teme access

Thanks Matt.

Yes – I agree Mr Clifford is demonstrating considerable ignorance here!

However we do want to try to find some win/win if we can to avoid protracted battles.

Cheers, Mark.

Mark Wheeler

Chief Executive



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15 Seymour Street, PO Box 443

Blenheim 7240, New Zealand

mark.wheeler@marlborough.govt.nz

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From: Matt Flynn [<mailto:mflynn@doc.govt.nz>]
Sent: Monday, 10 February 2020 10:42 a.m.
To: Tony Quirk-8077; Mark Wheeler-5030
Cc: Roy Grose; Phil Bradfield; Penny Wardle; Ric Cullinane
Subject: FW: Teme access

I have attempted to answer Mr Clifford's questions albeit most are covered by legislation that he probably should be aware of, and it is a little worrying that he appears to have very little idea of what his obligations are under the Health and Safety legislation, perhaps Worksafe should be involved also?

Q -How will the re-survey work be completed given the road has disappeared into the river in a number of places and how will this be funded.

A- The road was surveyed in 1950 (see attachment) on what we assume is the current formed track (confirmed through GPS survey as discussed).

In our opinion and that of the walking access commission we believe that the GPS with a variance of a couple of meters is adequate to define that the legal road does follow the surveyed line and therefore it does not need to be re-surveyed unless the land owner requires this for his own benefit for whatever reason, He would therefore need to fund.

A meter either side is not the issue here, the legal road is there and can be travelled safely, what we want to do is provide a clear marked track for the public to follow to allow access, and for the benefit of the land owner to clarify when a trespass has actually occurred.

We understand that where the legal road is currently may not be the most convenient place for the owner and would be more than happy to discuss other options.

If the Land owner is not prepared to discuss other options, with councils support we can simply put signage on the entrance install the markers along the track and advertise to the public that the legal access exists and they will find their own way up there (not perfect for Mr Clifford as this will be uncontrolled and very messy although very much within the law.)

Q- How do you intend to manage the access given we deal with poaching most days on our main valley road, Livestock disturbance, will MDC pay for this on a monthly basis.

A -Poaching is illegal and a Police Issue, we do not shut off access to roads because someone may use them to do something illegal. It is his business to manage his livestock on and around a legal road.

Q -How will MDC build and maintain this new access this has major consequences for our existing farming and hunting business.

A - the access is already formed and DOC have said that they will maintain the road to the required standard should use prove it necessary.

He should have been aware of this legal road before he bought the property and therefore understood how this may affect his business going forward.

Q- How will MDC manage H&S program and protect our staff and customers on a daily basis from the risks?

A -Unsure what the risk of people passing along a legal road may be, but as per legislation it is up to the PCBU Mr Clifford to manage the safety of public and staff on their property.

Q- How will MDC reduce and manage fire risk on a yearly basis

A -again a little unsure what is meant here, we assume he means the risk of public starting fires on the legal road? If this is the case DOC can monitor and close access in times of high fire danger if deemed necessary.

Q- How will MDC manage the risk for us when Heli Hunting (weekly) and encountering people wandering?

A- again a little confusing not sure how people passing along a legal road can create a risk? If he is referring to people "wandering" on Public Conservation land where he is undertaking this activity then he needs to consider his operation, as

currently he may encounter the public any time, and there is no concession that DOC issues that will allow exclusive use of this area for the purpose of Heli hunting.

If the risk he talks of is on the legal road then he should be covering this in his own health and safety planning as he is responsible for this as he would be for the main sealed road that pass's his property.

If Mr Clifford's concerns are around people wandering onto his private property, either accidentally or with intent , DOC are offering to provide signage to make the access clear and this would then enable DOC to support any trespass or illegal hunting prosecutions whereas at the moment this is far more difficult to prove hence the Police dropping any trespass notice that has been issued instead of following through with prosecutions.

I think it needs to be made clear to Mr Clifford that the public have a right to cross this legal road at the moment and we would like to work with him to discuss options that will limit disruption, if he is not prepared to enter into this discussion then the public and police should be informed of their rights and will no doubt use this access as is their right.

DOC are only asking to meet as we would like to be good neighbors.

If he refuses this opportunity DOC are happy to step aside and let the Public do what they wish as is their right however council/police should enforce the law and get him to remove the locked gates etc, that are currently deployed police have already agreed that they will do this.

It would be preferable that this is not the chosen option as DOC would prefer to work with him and reduce public conflict and bad relations.

Thanks Matt

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Teme access to Fernygair 2983

From: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Sent: Friday 25 September, 2020 09:56 am

To: Mark Wheeler-5030 <Mark.Wheeler@marlborough.govt.nz>

CC: Roy Grose <rgrose@doc.govt.nz>, James Gilmour <jgilmour@doc.govt.nz>, Ric Cullinane <ric.cullinane@walkingaccess.govt.nz>

Subject: Teme access to Fernygair 2983

Attachments: 33510 - Teme Access 1950 road survey SO 4005.pdf, FAQ-12-Health-and-safety-for-farmers.pdf, Teme letter 25 Sept 20, NZWAC and DOC.pdf

Associations: 1686 Facilitate access - Teme River [1686]

Dear Mark, I have attached a joint letter from the NZ Walking Access Commission and Department of Conservation answering Darren Clifford's questions re public access on ULR adjoining his Teme property and marginal strip to Ferny Gair Public Conservation Area. I apologise for the delay in getting this to you.

I have also attached relevant documents – the Teme 1950 road survey and a Health and Safety for Farmers Q & A document.

DOC and the Commission are hoping that this long-standing case can be resolved with the Council requiring Mr. Clifford to remove obstacles to public access. DOC and the Commission are happy to work with him towards enabling the public to enjoy access to Ferny Gair with minimum disruption to his business.

Regards,

Penny Wardle,

Regional Field Advisor, Kaitohutohu ā-Rohe,

New Zealand Walking Access Commission | Ara Hīkoi Aotearoa

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September 23, 2020

Mark Wheeler
Chief Executive
Marlborough District Council

Re obstacles to public access to Ferny Gair Conservation Area on legal road, marginal strip, adjoining the Teme

Dear Mark,

Covid-19 has certainly disrupted the progress being made regarding the Department of Conservation (DOC)'s desire to see obstacles to access removed, on unformed legal road and marginal strip adjoining the Teme to Ferny Gair Conservation Area.

On March 31 you emailed that Teme landholder, Darren Clifford, agreed to meet you but would first like several questions answered. DOC and New Zealand Walking Access Commission (the 'Commission') have jointly reviewed Mr. Clifford's questions and our responses are provided below.

In your email you mentioned that Mr. Clifford is looking for a "win-win" position. Mr. Clifford is illegally blocking a public road leading to a difficult-to-access public conservation area with high recreational values. Any benefit to Mr. Clifford would be in DOC's installation of signs to clarify the route from Avon Valley Road to Fernygair Conservation Area on unformed legal road and marginal strip.

DOC would like to work with Mr Clifford to sign-post a route which people already have the right to use. This may in the future be developed to provide a family-friendly walk to Lake Alexander where there is a DOC hut, currently only accessible due to the good-will of another land-holder who lets people cross private land on request.

As good neighbours, DOC would like to work with Mr. Clifford to reduce conflict and build a positive relationship. However, there has been no response to repeated offers to discuss this public access and whether he would prefer an alternative route in places.

Should Mr. Clifford refuse to remove illegal obstacles (rocks and locked gates), DOC with support from the Commission requests that the Marlborough District Council require that this be done.

Since we last met, Matt Flynn has left DOC Marlborough for a similar role in the Coromandel. Senior ranger James Gilmour at DOC's South Marlborough office will continue his efforts to see obstacles on legal road adjoining the Teme removed.

Following are the DOC/Commission's joint responses to Mr. Clifford's questions:

How will the re-survey work be completed given the road has disappeared into the river in a number of places and how will this be funded?

The road was surveyed in 1950 (see attachment) on what we assume is the current formed track (confirmed through GPS survey as discussed). DOC would not pay for a survey given that the road is already surveyed and GPS readings confirm that the track is likely on the road line.

If the landowner requires a survey, this would be for private interest therefore they would need to pay the costs.

The GPS survey confirms that no section of road where DOC intends to create access has "disappeared into the river".

If any section of existing legal access (legal road and marginal strip) is inconveniently located, DOC and Walking Access are happy to work with Mr. Clifford to mark and potentially formalise alternative access provided that this is free, certain, enduring and practical.

How do you intend to manage the access given we deal with poaching most days on our main valley road, Livestock disturbance, will Marlborough District Council (MDC) pay for this on a monthly basis?

Poaching is illegal and a police issue. Public roads cannot be obstructed because someone might use them to do something illegal. It is the landholder's responsibility to manage livestock on and around a legal road adjoining their property.

Holders of land adjoining an unformed legal road have the right not to have their livestock disturbed, or property damaged as a result of people passing along an unformed road. Also, landholders should ensure that livestock do not prevent the use of an unformed legal road by the public. This is reflected in s 33 of the Impounding Act 1955, which provides for the impounding of livestock wandering or tethered on any road in such a manner as to obstruct or be reasonably likely to obstruct the road. There is provision in s 34 of the 1955 Act for a local council to provide exemption from this provision where: "... (it) is satisfied that any road or any portion of a road within its district is so infrequently used by motor traffic that stock depasturing on or near the road will not constitute an inconvenience or danger to the users thereof."

If landholders wish to keep people off their property they may define and fence their boundaries or place signposts indicating the boundaries. In terms of protecting safety and convenience of the public, s353 of the Local Government Act 1974 empowers councils to require an adjoining landholder to fence the boundary of the road.

How will MDC build and maintain this new access this has major consequences for our existing farming and hunting business

The access is already formed and DOC has agreed to maintain the road to the required standard, should use prove this necessary.

Regarding consequences for the farming and hunting business, legal roads are identified on records of title and survey plans. DOC ensured that public access interest in this legal road was highlighted on the latest LIM report for the Teme, before Mr. Clifford purchased the property.

How will MDC manage H&S program and protect our staff and customers on a daily basis from the risks?

The Health and Safety at Work Act only applies to recreational access when the land is affected by a PCBU's work activities or is part of a workplace.

Generally, landholders are not liable if a member of the public is injured on public land intersecting or adjoining their land (including legal road). The Accident Compensation Act 2001 covers persons injured as the result of an accident. Only if any incident or injury occurs as a result of work on or near the public land, would there be liability under the Health and Safety at Work Act 2015. For example, if the injury takes place on an unformed legal road and the road being used is, or is close to, a workplace or workplace activity (such as tree felling), the Health and Safety at Work Act 2015 applies.

PCBUs can usually meet their duties to recreational visitors in simple ways (e.g. using signs, emails, or verbal warnings to let people know about work hazards). These duties apply whether the recreational activities are commercial or not. The only exception is when the PCBU's business or undertaking also provides the recreational activity (such as hunting). In this case, they're also responsible for managing risks associated with that activity, so far as is reasonably practicable.

See the attached NZ Walking Access Commission Health & Safety FAQ document and [this link](#) to the Worksafe website.

How will MDC reduce and manage fire risk on a yearly basis?

This legal road is no different to the multiple highways, rural roads and unformed legal roads throughout Marlborough where fire risk is managed by Marlborough

Kaikōura Fire & Emergency. Lighting a fire during a restricted or prohibited fire season without a permit is an offence and can result in a fine.

DOC, with advice from Fire and Emergency NZ, can monitor and close access in times of high fire danger, if deemed necessary. Fire thresholds would need to be negotiated, similar to the situation on the Queen Charlotte Track. These would determine trigger points for closing and reopening the track.

How will MDC manage the risk for us when Heli Hunting (weekly) and encountering people wandering?

DOC has offered to install signage which will clarify public access to Ferny Gair Conservation Area which is currently unclear. This should eliminate the current risk of the Teme helicopter hunting clients endangering people using the public legal road/marginal strip. Also, DOC would be better able to support any trespass or illegal hunting prosecutions, currently difficult to prove resulting in the police dropping charges.

People walking on legal road/marginal strip will not pose a risk to helicopter hunting clients.

If Mr. Clifford is referring to people "wandering" on Public Conservation Land where he takes heli-hunting clients, he needs to consider his operation as currently people may be encountered here at any time. DOC does not issue any concession that allows exclusive use of the Ferny Gair Conservation Area (OR any public conservation land) for the purpose of helicopter hunting.

Risks to the people on public land adjoining the property should be covered in the Teme's Health and Safety Plan.

Kind regards,

Roy Grose, Department of Conservation Northern South Island Operations Manager

James Gilmour, Department of Conservation Senior Ranger, recreation and historic

Ric Cullinane, New Zealand Walking Access Commission Chief Executive,

Penny Wardle, New Zealand Walking Access Commission Regional Field Advisor, Te Tau Ihu/Kaikōura

RE: Teme access to Fernygair 2983

From: Mark Wheeler-5030 <Mark.Wheeler@marlborough.govt.nz>
Received: Thursday 29 October, 2020 10:38 am
To: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>
CC: Roy Grose <rgrose@doc.govt.nz>, James Gilmour <jgilmour@doc.govt.nz>, Ric Cullinane <ric.cullinane@walkingaccess.govt.nz>, Kirsti Douglas <kirsti.mouatt@walkingaccess.govt.nz>, Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>
Subject: RE: Teme access to Fernygair 2983
Associations: 1686 Facilitate access - Teme River [1686]

Sorry Penny – no chance. I will try to progress through other staff and advise. Regards, Mark.

Mark Wheeler

Chief Executive



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Mobile: +64 21 587 802

Fax: +64 3 520 7496

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Blenheim 7240, New Zealand

mark.wheeler@marlborough.govt.nz

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From: Penny Wardle [mailto:Penny.Wardle@walkingaccess.govt.nz]
Sent: Thursday, 29 October 2020 10:10 a.m.
To: Mark Wheeler-5030
Cc: Roy Grose; James Gilmour; Ric Cullinane; Kirsti Douglas
Subject: Teme access to Fernygair 2983

Good morning, Mark. I am following up on this letter sent last month. Has there been any progress on this issue?

Regards,

Penny Wardle,

Regional Field Advisor, Kaitohutohu ā-Rohe,

New Zealand Walking Access Commission | Ara Hīkoi Aotearoa

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From: Penny Wardle
Sent: Friday, 25 September 2020 9:56 AM
To: Mark Wheeler-5030
Cc: Roy Grose ; James Gilmour ; Ric Cullinane
Subject: Teme access to Fernygair 2983

Dear Mark, I have attached a joint letter from the NZ Walking Access Commission and Department of Conservation answering Darren Clifford's questions re public access on ULR adjoining his Teme property and marginal strip to Ferny Gair Public Conservation Area. I apologise for the delay in getting this to you.

Teme access to Fernygair 2983

From: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Sent Tuesday 17 November, 2020 09:40 pm

To: Linda Craighead-7656 <Linda.Craighead@marlborough.govt.nz>, 'Jane Tito-7222' <jane.tito@marlborough.govt.nz>

Subject: Teme access to Fernygair 2983

Attachments: 33510 - Teme Access 1950 road survey SO 4005.pdf, FAQ-12-Health-and-safety-for-farmers.pdf, Teme letter 25 Sept 20, NZWAC and DOC.pdf

Associations: 1686 Facilitate access - Teme River [1686]

Hello Jane and Linda, as discussed on November 10, here's the letter sent to Mark Wheeler in September, followed up on in October. Regards, Penny Wardle, regional field advisor, NZ Walking Access Commission

From: Penny Wardle

Sent: Thursday, 29 October 2020 10:10 AM

To: Mark Wheeler-5030

Cc: 'Roy Grose' ; 'James Gilmour' ; Ric Cullinane ; Kirsti Douglas

Subject: Teme access to Fernygair 2983

Good morning, Mark. I am following up on this letter sent last month. Has there been any progress on this issue?

Regards,

Penny Wardle,

Regional Field Advisor, Kaitohutohu ā-Rohe,

New Zealand Walking Access Commission | Ara Hīkoi Aotearoa

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The Teme - Access

From: Mark Wheeler-5030 <Mark.Wheeler@marlborough.govt.nz>

Received: Friday 20 November, 2020 11:15 am

To: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>, 'rgrose@doc.govt.nz' <rgrose@doc.govt.nz>

Subject: The Teme - Access

Attachments: The Teme-Draft.pdf

Associations: 1686 Facilitate access - Teme River [1686]

Dear Roy and Penny

We note the continued pressure by both agencies for Council to address what are seen as obstructions for the public. This currently relates to the new owner but he is essentially taking the same approach as previous owners of the property.

Efforts have been made by me to initiate discussions with Mr Clifford but so far without success.

Attached is a draft prepared for me to send to Mr Clifford.

My own view is that he will continue to play hardball.

We have therefore considered where we move to if he does take that approach.

Obviously we could undertake a prosecution under the 1974 provisions of the Local Government Act but our view is that the prosecution provisions would not be the best tool to use if there is no co-operation. A prosecution would involve proof beyond reasonable doubt that an offence has been committed. Sometimes what seems to be obvious is not so easy to prove to a criminal standard.

An alternative course would be to apply to the District Court for orders requiring any obstructions to be removed. This would require the landowner to engage and give reasons for access being denied.

Clearly the push for action is one by your two agencies.

I realise the argument might be made that it is Council's obligation to take action but a response to that is that any action is a matter for Council's discretion.

On that basis our view is that we really need to look to the two agencies to assist Council if we have to go down this Court pathway. That assistance should extend to a contribution for all the costs involved.

There would need to be evidence submitted about the surveyed road line plus legal representation.

We expect the initial cost in any application to the Court would be in the region of \$4,000 - \$5,000.

It may well prompt action by the landowner so that no further expenses need to be incurred, however if the landowner wants to argue the toss it might be difficult to assess how far or how high the costs might go.

Obviously if Council was successful it would recover some costs but certainly this would not extend to the full costs incurred.

I pass the matter on for you each to consider.

I am reluctant to send any further communication since I need to be sure that if we continue to be ignored action would follow and such a call will depend on your replies.

Regards

Mark

Mark Wheeler

Chief Executive



Phone: +64 3 520 7400

Mobile: +64 21 587 802

Fax: +64 3 520 7496

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Blenheim 7240, New Zealand

mark.wheeler@marlborough.govt.nz

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RE: The Teme -Access

From: Kirsti Douglas <kirsti.mouatt@walkingaccess.govt.nz>

Received Monday 30 November, 2020 03:53 pm

To: Jill Crossman-7596 <Jill.Crossman@marlborough.govt.nz>

CC: Jo Gould <jgould@doc.govt.nz>, Helen Price <hprice@doc.govt.nz>, Phil Bradfield <pbradfield@doc.govt.nz>, James Gilmour <jgilmour@doc.govt.nz>, ebrownlie@doc.govt.nz <ebrownlie@doc.govt.nz>, Roy Grose <rgrose@doc.govt.nz>, Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Subject: RE: The Teme -Access

Associations: 1686 Facilitate access - Teme River [1686]

Kia ora Mark and Jill,

I can also confirm that the Commission has committed to sharing the potential legal costs (up to \$3,000) to establish access in the Teme.

Ngā mihi

Kirsti Douglas

National Operations Manager - Kaitohutohu Kōkiri

New Zealand Walking Access Commission | Ara Hīkoi Aotearoa

P: (04) 815 8514 | **M:** 027 815 8530 | **W:** www.walkingaccess.govt.nz

A: Level 15, Majestic Centre, 100 Willis Street, Wellington / PO Box 11181, Manners Street, Wellington 6142

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From: Roy Grose <rgrose@doc.govt.nz>

Sent: Friday, 27 November 2020 3:04 PM

To: Jill Crossman-7596 <Jill.Crossman@marlborough.govt.nz>; Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Cc: Jo Gould <jgould@doc.govt.nz>; Helen Price <hprice@doc.govt.nz>; Phil Bradfield <pbradfield@doc.govt.nz>; James Gilmour <jgilmour@doc.govt.nz>; Euan Brownlie <ebrownlie@doc.govt.nz>

Subject: FW: The Teme - Access

Kia ora Mark and Jill,

I said I would get back to you to advise whether we could support and join MDC and Walking Access Commission with the potential legal costs to establish access in the Teme. I can confirm we are willing to share the legal costs with an application to the courts as estimated.

Regards Roy

From: Jill Crossman-7596 <Jill.Crossman@marlborough.govt.nz> **On Behalf Of** Mark Wheeler-5030

Sent: Friday, 20 November 2020 11:15 a.m.

To: 'penny.wardle@walkingaccess.govt.nz' <penny.wardle@walkingaccess.govt.nz>; Roy Grose <rgrose@doc.govt.nz>

Subject: The Teme - Access

Dear Roy and Penny

We note the continued pressure by both agencies for Council to address what are seen as obstructions for the public. This currently relates to the new owner but he is essentially taking the same approach as previous owners of the property.

Efforts have been made by me to initiate discussions with Mr Clifford but so far without success.

Attached is a draft prepared for me to send to Mr Clifford.

My own view is that he will continue to play hardball.

We have therefore considered where we move to if he does take that approach.

Obviously we could undertake a prosecution under the 1974 provisions of the Local Government Act but our view is that the prosecution provisions would not be the best tool to use if there is no co-operation. A prosecution would involve proof beyond reasonable doubt that an offence has been committed. Sometimes what seems to be obvious is not so easy to prove to a criminal standard.

An alternative course would be to apply to the District Court for orders requiring any obstructions to be removed. This would require the landowner to engage and give reasons for access being denied.

Clearly the push for action is one by your two agencies.

I realise the argument might be made that it is Council's obligation to take action but a response to that is that any action is a matter for Council's discretion.

On that basis our view is that we really need to look to the two agencies to assist Council if we have to go down this Court pathway. That assistance should extend to a contribution for all the costs involved.

There would need to be evidence submitted about the surveyed road line plus legal representation.

We expect the initial cost in any application to the Court would be in the region of \$4,000 - \$5,000.

It may well prompt action by the landowner so that no further expenses need to be incurred, however if the landowner wants to argue the toss it might be difficult to assess how far or how high the costs might go.

Obviously if Council was successful it would recover some costs but certainly this would not extend to the full costs incurred.

I pass the matter on for you each to consider.

I am reluctant to send any further communication since I need to be sure that if we continue to be ignored action would follow and such a call will depend on your replies.

Regards

Mark

Mark Wheeler

Chief Executive



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Blenheim 7240, New Zealand

mark.wheeler@marlborough.govt.nz

The Teme access dispute 2983

From: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Sent: Tuesday 8 December, 2020 01:12 pm

To: 'Jane Tito-7222' <jane.tito@marlborough.govt.nz>

CC: Linda Craighead-7656 <Linda.Craighead@marlborough.govt.nz>

Subject: The Teme access dispute 2983

Associations: 1686 Facilitate access - Teme River [1686]

Hi Jane, have you caught up with MDC CE Mark Wheeler re The Teme access to Fernygair? He drafted a response to Darren Clifford and has requested that DOC and the NZ Walking Access Commission share legal costs of requiring obstacles to be removed, should Mr Clifford "continue to play hardball". Both DOC and the Commission's operations managers, Roy Grose and Kirsti Douglas, have agreed.

Regards,

Penny Wardle,

Regional Field Advisor, Kaitohutohu ā-Rohe,

New Zealand Walking Access Commission | Ara Hīkoi Aotearoa

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From: Linda Craighead-7656

Sent: Tuesday, 8 December 2020 10:27 AM

To: Penny Wardle ; Jane Tito-7222

Cc: Kaye McIlveney-7552

Subject: RE: Castlebrae OIO 2535 and Renners Rd 5332

Hi Penny

Jane and I thought we would go and have a look at this area in the new year and see what could be done to enhance access if this is practical. Obviously we would need to talk with the adjoining landowners about this particularly if the only option is to see if we could get an access strip. I know you had said in your email that the next step is registration of esplanade and access strip instruments but I was also wondering how far off this is.

We will follow-up with Tony Quirk and Rob Dunn about this access issue.

Also Jane will follow-up on the Ferny Gair matter.

Cheers

Linda

Parks and Open Spaces | NGĀ PAPA O WAIRAU

progress re removal of obstructions on legal access at The Teme 2983

From: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Sent Wednesday 23 June, 2021 10:05 am

To: Mark Wheeler-5030 <Mark.Wheeler@marlborough.govt.nz>, 'Jane Tito-7222' <jane.tito@marlborough.govt.nz>, Linda Craighead-7656 <Linda.Craighead@marlborough.govt.nz>

Subject: progress re removal of obstructions on legal access at The Teme 2983

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Tēnā koutou, Mark and Jane and Linda.

Could I please have an update on progress with removing obstacles on legal road at The Teme?

In December the NZ Walking Access Commission and DOC agreed to contribute to legal costs of requiring obstacles to be removed. Jane, you indicated you would follow up on this matter.

Ngā mihi,

Penny Wardle,

Regional Field Advisor, Kaitohutohu ā-Rohe, Te Taihu/Top of the South,

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FYI: The Teme LIM 2983

From: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Sent: Friday 25 June, 2021 01:13 pm

To: Ric Cullinane <ric.cullinane@walkingaccess.govt.nz>

Subject: FYI: The Teme LIM 2983

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

From: Penny Wardle

Sent: Friday, 25 June 2021 1:13 PM

To: Tony Quirk-8077

Subject: The Teme LIM 2983

Thank you, Tony. DOC has GPSed the proposed route and I have walked it with DOC representatives and reserves and amenities manager, Jane Tito, confirming that the route is both public and practical.

The addition to the LIM is helpful. You will have on file, further information about this access should any potential purchaser request more information.

Regards,

Penny Wardle,

Regional Field Advisor, Kaitohutohu ā-Rohe, Te Taihū/Top of the South,

New Zealand Walking Access Commission | Ara Hīkoi Aotearoa

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From: Bridget McCulloch-8127 <Bridget.McCulloch@marlborough.govt.nz> **On Behalf Of** Tony Quirk-8077

Sent: Friday, 25 June 2021 10:49 AM

To: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Cc: Mark Wheeler-5030 <Mark.Wheeler@marlborough.govt.nz>

Subject: The Teme

I refer to your query to Mark Wheeler dated 23 June. Mark is away on bereavement leave but asked if I would send an update to you.

A LIM was requested a few months ago which seemed to indicate the property was on the market for sale.

What we did was include within the LIM the following notation about access.

"Access Issues

Within the property there is unformed Council road. This unformed road runs from a formed Council road through to a reserve administered by the Department of Conservation. The Department and the Walkway Access Commission have been seeking opportunities for public access across the unformed Council road. There have been responses from the landowners that the unformed road is not passable at certain points but the Department and the Commission nevertheless

consider that access is achievable. At a point near where the unformed road intercepts with the formed road there appears to be a placed barrier preventing access and if this barrier is on unformed legal road, it should be removed.

Public access along unformed legal road is a public entitlement but Council has no obligation to form the road to allow for particular access”.

We are keeping property sales monitored since we could then deal with any new owner.

We advised DOC of the action taken and received the response:

“This is particularly helpful and appreciated”.

Tony Quirk

District Secretary



**MARLBOROUGH
DISTRICT COUNCIL**



Phone: 03 520 7400

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The Teme 2983 access case update request

From: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Sent: Thursday 23 December, 2021 05:11 pm

To: Mark Wheeler-5030 <Mark.Wheeler@marlborough.govt.nz>

CC: 'Jane Tito-7222' <jane.tito@marlborough.govt.nz>, James Gilmour <jgilmour@doc.govt.nz>

Subject: The Teme 2983 access case update request

Attachments: 2983, Proposed Access, Avon Valley Road - A3 Aerial Map (Zoomed).zip, 26642 - Teme GPS log 18 Sept 2015.pdf, 33510 - Teme Access 1950 road survey SO 4005.pdf, 1686-Teme letter 25 Sept 20, NZWAC and DOC.pdf

Associations: 1686 Facilitate access - Teme River [1686]

Hello Mark, all the best for the festive season and 2022.

As I review cases, I am intensely aware that The Teme is the NZ Walking Access Commission's oldest unresolved case and progress has unfortunately again stalled over the past year. This is despite the access issues being clearcut, a strong desire from the Department of Conservation to have this resolved and both DOC and NZWAC agreeing to contribute to legal costs at the request of the MDC.

A re-cap:

DOC South Marlborough first brought this case to the Commission's attention. It was recognised that legal road and marginal strip could provide family-friendly public access to the DOC hut at Lake Alexander in Ferny Gair Public Conservation Reserve. Currently, the only access is through private land. This would be by driving on legal road to a carpark then walking on marginal strip to reach Ferny Gair Conservation area (see attached zip file, Proposed Access, Avon Valley Rd).

In 2015 then senior ranger with DOC South Marlborough GPSed the route (log attached).

In February 2019 I walked this route on legal road with Matt and MDC reserves and amenities manger Jane Tito, following the GPSed route to ensure we were on public land.

In December 2019 a high level meeting was held between yourself, DOC Northern SI operations manager Roy Grose, Matt Flynn, DOC senior ranger James Gilmour, NZWAC chief executive Ric Cullinane and myself.

I understand that you followed up with the landholder, Darren Clifford who had a number of questions which were answered by Walking Access and DOC in the attached 25 September 2020 letter.

In November 20 you emailed Roy Grose and myself saying that if Mr Clifford did not cooperate, an alternative course would be to apply to the District Court for orders requiring any obstructions to be removed. This would require the landowner to engage and give reasons for access being delayed. DOC and the Walking Access Commission agreed to share potential legal costs of taking this action.

In December 2020 Jane Tito and Linda Craighead said they would follow up on this matter.

The last communication was from Tony Quirk in June 2021 saying a LIM report had been requested by the Teme's owner indicating the property was for sale. I am not aware this has happened. Also, it would be good to sort this prior to any sale.

The highlighted text in the LIM (below) is inaccurate as it was confirmed on the field visit that access is within legal road (then would be on marginal strip managed by DOC).

This unformed road runs from a formed Council road through to a reserve administered by the Department of Conversation. The Department and the Walkway Access Commission have been seeking opportunities for public access across the unformed Council road. There have been responses from the landowners that the unformed road is not passable at certain points but the Department and the Commission nevertheless consider that access is achievable. At a point near where the unformed road intercepts with the formed road there appears to be a placed barrier preventing access and if this barrier is on unformed legal road, it should be removed.

Public access along unformed legal road is a public entitlement but Council has no obligation to form the road to allow for particular access.

In the past, DOC has intimated that they could maintain this road.

I do hope that this long-running case can be finally resolved in 2022.



Penny Wardle,
 Regional Field Advisor, Kaitohutohu ā-Rohe, Te Tau Ihu me Kaikōura/Top of the South,

New Zealand Walking Access Commission | Ara Hikoi Aotearoa

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RE: The Teme 2983 access case update

From: Mark Wheeler-5030 <Mark.Wheeler@marlborough.govt.nz>
Sent: Thursday, 13 January 2022 8:24 AM
To: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>
Cc: Jane Tito-7222 <Jane.Tito@marlborough.govt.nz>; James Gilmour <jgilmour@doc.govt.nz>; Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>
Subject: RE: The Teme 2983 access case update request

Hi Penny.

I hope you had a good break and enjoyed the festive season.

I agree that the Teme issue has dragged on for a long time.

Last year I had to prioritise other significant challenges and this one was unfortunately neglected sorry.

It has also been very difficult to engage with Mr Clifford .

It is timely now to try to get this matter resolved with yours and DOC's help.

We are sending another communication to Mr Clifford and putting a deadline on his response before legal action commences.

The latter is not preferred as past experience is that legal action is expensive and protracted.

So I'll try to come to some arrangement first.

Best wishes,

Mark.

Mark Wheeler

Chief Executive



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Blenheim 7240, New Zealand

mark.wheeler@marlborough.govt.nz

www.marlborough.govt.nz

The Teme Access 2983

From: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Sent: Tuesday 25 January, 2022 05:10 pm

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

CC: Bridget McCulloch-8127 <Bridget.McCulloch@marlborough.govt.nz>, Mark Wheeler-5030 <Mark.Wheeler@marlborough.govt.nz>

Subject: The Teme Access 2983

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Hello Tony, thank you for the update re The Teme.

NZ Walking Access CEO Ric Cullinane advises that Walking Access often engages solicitor Lisa Hansen l.hansen@bcomm.nz 021 0241 3822 on access issues.

Regards,

Penny Wardle,

Regional Field Advisor, Kaitohutohu ā-Rohe, Te Tau Ihu me Kaikōura/Top of the South,

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From: Bridget McCulloch-8127 <Bridget.McCulloch@marlborough.govt.nz> **On Behalf Of** Tony Quirk-8077

Sent: Wednesday, 19 January 2022 10:34 AM

To: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Subject: The Teme Access

I see Mark has communicated with you. One hopes his contact with the owner will result in a solution but if not then clearly action will need to be taken.

We would engage Peter Radich of Radich Law who is aware of this particular file. It may be he might consider engagement of Counsel with particular expertise in access matters. That would be a call he would make but I wonder whether you could check with your head office to obtain the names of Counsel Walking Access consider have particular expertise to address the issues that will arise if proceedings are filed about access to The Teme.

There would need to be reports by both Walking Access and DOC clearly identifying the access required and the current impediments seen to such access being available for public access. There is no need for any such comments at this stage but I float the point that if proceedings are filed this would be needed by way of evidence.

Look forward to hearing from you.

Thanks

Tony Quirk

District Secretary



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Re: The Teme Access to Ferny Gair 2983

From: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>
Received: Friday 11 February, 2022 02:57 pm
To: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>
CC: Mark Townsend <mtownsend@doc.govt.nz>, Roy Grose <rgrose@doc.govt.nz>, James Gilmour <jgilmour@doc.govt.nz>
Subject: Re: The Teme Access to Ferny Gair 2983
Attachments:
Associations: 1686 Facilitate access - Teme River [1686]

The answer was no.

The call made at the time by Mark was that the issues could be discussed at any meeting held.

It is now thought there is a need to cover off the queries .

It maybe the info isn't different but you may have changed or different thoughts .

Tony

On 11/02/2022, at 2:47 PM, Penny Wardle wrote:

Hello Mark, thank you for sending Darren Clifford's questions which as Tony suggested, will be talked through with DOC for a joint response.

First, I am checking were the answers to earlier questions in the attached NZWAC/DOC letter communicated to Darren?

Regards,

Penny Wardle,

Regional Field Advisor, Kaitohutohu ā-Rohe, Te Tau Ihu me Kaikōura/Top of the South,

New Zealand Walking Access Commission | Ara Hīkoi Aotearoa

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From: Tony Quirk-8077

Sent: Friday, 4 February 2022 12:03 pm

To: Penny Wardle

Subject: Re: Access to Ferny Gair

Thanks

FYI I understand from Roy he was going to liaise with you so there was a single reply back to us.

Tony

On 4/02/2022, at 11:56 AM, Penny Wardle <Penny.Wardle@walkingaccess.govt.nz> wrote:

Thank you Tony. I'll take a look.

Regards, Penny Wardle

From: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Sent: Thursday, 3 February 2022 6:02 PM

To: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>; Roy Grose <rgrose@doc.govt.nz>

Subject: Fwd: Access to Ferny Gair

Hi to you both

Mark has received a reply as below.

He'd appreciate comments on the matters raised so he may take the matter a little further. Obviously a meeting with all players is needed in our view but we have to work towards that given Clifford has previously rejected any meeting other than with Council.

Many thanks

Tony

For Mark

Begin forwarded message:

From: Mark Wheeler-5030 <Mark.Wheeler@marlborough.govt.nz>
Date: 3 February 2022 at 5:27:48 PM NZDT
To: Darren Clifford section 9(2)(a)
Cc: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>, Robert Foitzik <Robert.Foitzik@marlborough.govt.nz>
Subject: RE: Access to Ferny Gair

Thanks Darren

I need to discuss the requirements you have with DOC to see if any arrangements can be made .

The key point is you have no legal right to limit road use and certainly no right to conduct a shooting business where the public might be in danger.

So it will need concessions from yourself ,from Council and from DOC to find a way forward.

I will organise a meeting asap once I've explored any possibilities which I intend to do urgently.

Regards.

Mark.

Mark Wheeler
Chief Executive

Phone: +64 3 520 7400

Mobile: +64 21 587 802

Fax: +64 3 520 7496

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Blenheim 7240, New Zealand

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From: Darren Clifford section 9(2)(a)
Sent: Thursday, 3 February 2022 3:55 p.m.
To: Mark Wheeler-5030 <Mark.Wheeler@marlborough.govt.nz>
Subject: RE: Access to Ferny Gair

Hi Mark

Thanks for the email.

As I have stated before I am happy to have dialed with MDC

Key questions I have asked before are (in no order)

How would the walking track be formed, maintained , sign posted

How would stock disturbance at lambing be controlled

How would dogs be prohibited at all time

How would firearms be treated

How as landowner are we going to protect our staff, customers as part of our H&S

Given we run a shooting business how would access be controlled so we know who and when a person is walking within the farm

Where are people going to park on the main road

Once we have some understanding from how MDC on how this could be set up and managed, we will forward your information to our legal represented for further discussion

Darren Clifford

section 9(2)(a)

E: section 9(2)(a)

From: Rebecca Waldron-5173 <Rebecca.Waldron@marlborough.govt.nz> **On**

Behalf Of Mark Wheeler-5030

Sent: Friday, 14 January 2022 9:17 AM

To: Darren Clifford <section 9(2)(a)>

Subject: Access to Ferny Gair

Hi Darren

I last corresponded with you in June 2020. Time rolls on! To recap:

1. Over recent years the Walking Access Commission and the Department of Conservation have been pressing for public access to public conservation areas near The Teme. Council has been approached for support and with the request that it enforce the entitlements of the public to use unformed legal road. Council has endeavoured to engage with previous owners and with yourself but access to the public has not been facilitated and has been obstructed.
2. There has to be a recognition that areas set aside for the public should be accessible by the public. Council realises that landowners see this as an intrusion into what they have regarded as their private areas but this attitude on the part of landowners is not sustainable.
3. Against that background, Council would like to engage with you to look for some practical mutually satisfactory arrangements which will allow the public to gain walking access to areas where they are entitled to go. Moreover, Council would like to engage with you so that particular access to passable areas of legal road is not obstructed as it appears to be at the present time.
4. Council understands that you will have a reluctance to cooperate but we see cooperation as being desirable rather than for Council to have to exercise the powers that it has to enforce the granting of access and the removal of obstructions.

Therefore, may I ask that you arrange to meet with Council in the next 21 days to talk positively about these issues. If you are not willing to engage on these issues then Council will have to take steps in relation to any obstruction of land which is road.

Regards

Mark Wheeler

Chief Executive

Phone: +64 3 520 7400

Mobile: +64 21 587 802

Fax: +64 3 520 7496

15 Seymour Street, PO Box 443

Blenheim 7240, New Zealand

mark.wheeler@marlborough.govt.nz

www.marlborough.govt.nz

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This e-mail message has been scanned by **SEG Cloud**

RE: Teme Access to Ferny Gair

From: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Sent: Tuesday 22 March, 2022 01:15 pm

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

CC: James Gilmour <jgilmour@doc.govt.nz>, Ric Cullinane <ric.cullinane@walkingaccess.govt.nz>, Roy Grose <rgrose@doc.govt.nz>

Subject: RE: Teme Access to Ferny Gair

Attachments: FAQ-12-Health-and-safety-for-farmers.pdf, 33510-Teme Access 1950 road survey SO 4005.pdf, Teme letter 25 Sept 20, NZWAC and DOC.pdf

Associations: 1686 Facilitate access - Teme River [1686]

Hello Tony, the Department of Conservation and New Zealand Walking Access would first like to check that content of the joint Walking Access/DOC September 2020 letter to Mark Wheeler (attached) has been communicated by Council to Darren Clifford. This addresses many of the issues raised.

We are happy to answer any questions that remain.

The letter was sent to Mark Wheeler on 25/9/20 with the attachments included above.

Regards,

Penny Wardle,

Regional Field Advisor, Kaitohutohu ā-Rohe, Te Tau Ihu me Kaikōura/Top of the South,

New Zealand Walking Access Commission | Ara Hīkoi Aotearoa

section 9(2)(a) www.walkingaccess.govt.nz

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From: Bridget McCulloch-8127 **On Behalf Of** Tony Quirk-8077

Sent: Tuesday, 22 March 2022 11:19 am

To: Penny Wardle

Cc: 'rgrose@doc.govt.nz'

Subject: Teme Access to Ferny Gair

Hi Penny

I note you were liaising with DOC about a joint response so that Mark can get something further sent to Darren Clifford.

Look forward to hearing from you.

Thanks

Tony Quirk

District Secretary



Phone: 03 520 7400

15 Seymour Street, PO Box 443

Blenheim 7240, New Zealand

tony.quirk@marlborough.govt.nz

www.marlborough.govt.nz

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RE: Access to Ferny Gair - Clifford

From: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Sent: Tuesday 29 March, 2022 10:44 am

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

CC: James Gilmour <jgilmour@doc.govt.nz>

Subject: RE: Access to Ferny Gair - Clifford

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Good morning, Tony. I see from the attached email that this has already been sent to Darren Clifford. The Commission is happy to help further, if required.

Regards,

Penny Wardle, Regional Field Advisor, NZ Walking Access Commission

From: Bridget McCulloch-8127 **On Behalf Of** Tony Quirk-8077

Sent: Wednesday, 23 March 2022 2:38 pm

To: Penny Wardle

Cc: 'rgrose@doc.govt.nz'

Subject: Access to Ferny Gair - Clifford

Attached is a draft email from Mark to Clifford.

I just want to make sure you are comfortable with the answers as outlined.

Mark, in acknowledging the communication from Clifford in early February, made it clear that he had no legal right to limit road use and no right to conduct a shooting business where the public might be in danger. Mark identified it would need concessions from him, from Council and from DOC to find a way forward.

Let me know if you are comfortable with the proposed email before it gets sent.

Thanks

Tony Quirk

District Secretary



Phone: 03 520 7400

15 Seymour Street, PO Box 443

Blenheim 7240, New Zealand

tony.quirk@marlborough.govt.nz

www.marlborough.govt.nz

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Walking Access edits to email re access on legal road, The Teme 2983

From: Penny Wardle <Penny.Wardle@walkingaccess.govt.nz>

Sent: Wednesday 30 March, 2022 10:06 am

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

CC: Mark Wheeler-5030 <Mark.Wheeler@marlborough.govt.nz>, James Gilmour <jgilmour@doc.govt.nz>

Subject: Walking Access edits to email re access on legal road, The Teme 2983

Attachments: 1950 Plan Teme.pdf, H&S FAQ.pdf

Associations: 1686 Facilitate access - Teme River [1686]

Hello Tony, thanks for the reassurance that this email has not been sent to Darren, despite appearances!

I've suggested some edits, including to the first sentence. I apologise for the delay in responding to Council's request for answers to questions from Mr Clifford. However, this is minor in the context of how long it's taken for this issue to be addressed. I believe this is the Commission's oldest live case, dating back to 2012. Also, DOC and NZWAC responded to similar questions in a letter sent to Council in September 2020 which were not communicated to Mr Clifford at that time - understandable given Covid disruptions.

As this is a communication between Council as manager of the legal road and Mr Clifford, I have changed the wording to make it clear that DOC/NZWAC as advocates for public enjoyment of legal access, are acting in an advisory capacity.

If Darren has further questions, DOC and the Commission are happy to help or to attend a meeting as has been suggested.

Regards,

Penny Wardle, Regional Field Advisor, NZ Walking Access Commission

Darren,

I refer to your email of 3 February and am sorry that it has taken me time to get back to you on questions you raised but I have been waiting for responses from DOC and the Walking Access Commission.

You raised several questions about the illegal blocking of a public road leading to a difficult-to-access conservation area with high recreational values. and what I have done is set out Below are your questions and the Council's response, based on advice received back from DOC and the New Zealand Walking Access Commission.

1. How will the re-survey work be completed given the road has disappeared into the river in a number of places and how will this be funded?

The road was surveyed in 1950 (see [attachment](#)) on what we assume is the current formed track (confirmed through GPS survey as discussed). DOC would not pay for a survey given that the road is already surveyed and GPS readings confirm that the track is likely on the road line.

If you require a survey, this would be for private interest therefore you would need to pay the costs.

The GPS survey confirms that no section of road where DOC intends to create access has "disappeared into the river".

If any section of existing legal access (legal road and marginal strip) is inconveniently located, DOC and Walking Access are happy to work with you to mark and potentially formalise alternative access provided this is free, certain, enduring and practical.

2. How do you intend to manage the access given we deal with poaching most days on our main valley road, livestock disturbance, will Marlborough District Council (MDC) pay for this on a monthly basis?

Poaching is illegal and a police issue. Public roads cannot be obstructed because someone might use them to do something illegal. It is the landholder's responsibility to manage livestock on and around a legal road adjoining their property.

Holders of land adjoining an unformed legal road have the right not to have their livestock disturbed, or property damaged as a result of people passing along an unformed road. Also, landholders should ensure that livestock do not prevent the use of an unformed legal road by the public. This is reflected in s33 of the Impounding Act 1955, which provides for the impounding of livestock wandering or tethered on any road in such a manner as to obstruct or be reasonably likely to obstruct the road. There is provision in s34 of the 1955 Act for a local council to provide exemption from this provision where: "... (it) is satisfied that any road or any portion of a road within its district is so infrequently used by motor traffic that stock depasturing on or near the road will not constitute an inconvenience or danger to the users thereof".

If landholders wish to keep people off their property, they may define and fence their boundaries or place signposts indicating the boundaries. In terms of protecting safety and convenience of the public, s353 of the Local Government Act 1974 empowers councils to require an adjoining landholder to fence the boundary of the road.

3. How will MDC build and maintain this new access that has major consequences for our existing farming and hunting business?

The access is already formed and DOC has agreed to maintain the road to the required standard, should use prove this necessary.

Regarding consequences for the farming and hunting business, legal roads are identified on records of title and survey plans. DOC ensured that public access interest in this legal road was highlighted on the latest LIM report for the Teme, before you purchased the property.

4. How will MDC manage H&S program and protect our staff and customers on a daily basis from the risks?

The Health and Safety at Work Act applies only to recreational access when the land is affected by a PCBU's work activities or is part of a workplace.

Generally, landholders are not liable if a member of the public is injured on public land intersecting or adjoining their land (including legal road). The Accident Compensation Act 2001 covers persons injured as the result of an accident. Only if any incident or injury occurs as a result of work on or near the public land, would there be liability under the Health and Safety at Work Act 2015. For example, if the injury take place on an unformed legal road and the road being used is, or is close to, a workplace or workplace activity (such as tree felling), the Health and Safety at Work Act 2015 applies.

PCBUs can usually meet their duties to recreational visitors in simple ways (eg using signs, emails, or verbal warnings to let people know about work hazards). These duties apply whether the recreational activities are commercial or not. The only exception is when the PCBU's business or undertaking also provides the recreational activity (such as hunting). In this case, they're also responsible for managing risks associated with that activity, so far as is reasonably practicable.

*See the **attached** NZ Walking Access Commission Health and Safety FAQ document.*

5. How will MDC reduce and manage fire risk on a yearly basis?

This legal road is no different to the multiple highways, rural roads and unformed legal roads throughout Marlborough where fire risk is managed by Marlborough, Kaikoura Fire and Emergency. Lighting a fire during a restricted or prohibited fire season without a permit is an offence and can result in a fine.

DOC, with advice from Fire and Emergency NZ, can monitor and close access in times of high fire danger, if deemed necessary. Fire thresholds would need to be negotiated, similar to the situation on the Queen Charlotte Track. These would determine trigger points for closing and reopening the track.

6. How will MDC manage the risk for us when Heli Hunting (weekly) and encountering people wandering?

*DOC has offered to **work with you to** install signage which will clarify public access to Ferny Gair Conservation Area which is currently unclear. This should eliminate the current risk of the Teme helicopter hunting clients endangering people using the public legal road/marginal strip. Also, DOC would be better able to support any trespass or illegal hunting prosecutions, currently difficult to prove resulting in the police dropping charges.*

People walking on legal road/marginal strip will not pose a risk to helicopter hunting clients.

*If you are referring to people "wandering" on Public Conservation Land where ~~you he takes~~ heli-hunting clients **are taken**, ~~he you~~ needs to consider **his** the operation as currently people may be encountered here at any time. DOC does not issue any concession that allows exclusive use of the Ferny Gair Conservation Area (or any public conservation land) for the purpose of helicopter hunting.*

Risks to the people on public land adjoining the property should be covered in the Teme's Health and Safety Plan.

I trust the answers provide some reassurance for you.

I am happy to arrange a meeting for any clarification, but it would need to involve DOC and the Walking Access Commission representatives as well.

We look forward to hearing back from you.

Mark Wheeler

Penny Wardle,

Regional Field Advisor, Kaitohutohu ā-Rohe, Te Tau Ihu me Kaikōura/Top of the South,

New Zealand Walking Access Commission | Ara Hīkoi Aotearoa

section 9(2)(a)

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RADICH LAW

BARRISTERS AND SOLICITORS

DATE: 22 August 2022

TO: 1. New Zealand Walking Access Commission
Attention: Penny Wardle

2. Department of Conservation
Attention: Roy Grose

CC: Marlborough District Council
Attention: Tony Quirk

All by email

FROM: Peter Radich

RE: **TEME ACCESS**

1. As you know, Council has been trying for some time in response to the requests from the Commission and the Department to open up access in relation to the Teme. It has been said that the landowner Darren Clifford has impeded access to the general public.
2. Council has been endeavouring to obtain the co-operation of Mr Clifford to the opening up of access and has now had to advise him that unless access can be opened up there will be little alternative to the commencement of proceedings.
3. If proceedings are to be taken by Council then a lot more information than Council currently has available will be required. We would need to liaise with the Commission and the Department and we would need all of the information that you have relating to access and any impediments to access. Earlier, offers had been made to give assistance with costs.
4. Unless Mr Clifford responds positively and is prepared to work with yourselves and Council for the opening up of access then proceedings will be necessary. However, it is important that any proceedings are successful and that will be dependent on the quality and extent of the evidence available.
5. You will each know the situation on the ground better than Council. We would therefore appreciate all of the information that you can provide us which bears on the issue of access and any impediments to access.

Yours sincerely

P.J. Radich
email: peter@radichlaw.co.nz
PJR-022096-1375-26-V2

Teme Access 2983

From: Penny Wardle <Penny.Wardle@herengaanuku.govt.nz>

Sent: Wednesday 24 August, 2022 06:28 pm

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

CC: Phil Bradfield <pbradfield@doc.govt.nz>, Helen Price <hprice@doc.govt.nz>, James Gilmour <jgilmour@doc.govt.nz>, Roy Grose <rgrose@doc.govt.nz>

Subject: Teme Access 2983

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Hello Tony, thanks for this. I agree with Roy, this letter from **section 9(2)(a)** on behalf of Darren Clifford does seem positive. It is understood that flood issues must be the Marlborough District Council's priority, for some time.

Regards,

Penny Wardle

Kaitohutohu ā-Rohe | Regional Field Advisor
Aotearoa Outdoor Access Commission

section 9(2)(a)

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From: Roy Grose
Sent: Wednesday, 24 August 2022 11:00 am
To: Tony Quirk-8077 ; Penny Wardle
Cc: Phil Bradfield ; Helen Price
Subject: RE: Teme Access

Thanks Tony,

There looks to be a change in approach from Clifford which could be helpful?

I appreciate you bringing us up to date and can certainly understand there are far more pressing issues on Mark's plate at present. I hope you and the team are well as we all work through these climatic events and issues. Regards Roy

From: Bridget McCulloch-8127 <Bridget.McCulloch@marlborough.govt.nz> **On Behalf Of** Tony Quirk-8077
Sent: Wednesday, 24 August 2022 9:24 am
To: 'penny.wardle@herengaanuku.govt.nz' <penny.wardle@herengaanuku.govt.nz>; Roy Grose <rgrose@doc.govt.nz>
Subject: Teme Access

Further to the communication you received from Peter Radich.

I **attach** the interim communication received from the solicitor acting for the landowner.

It is intended to extend an appreciation for the contact but to point out that Mark is simply not in a position at this time to meet because of obvious pressures on him with the flood events.

When a meeting is convened, the intention is to involve you both.

Tony Quirk

District Secretary



Phone: 03 520 7400

15 Seymour Street, PO Box 443

Blenheim 7240, New Zealand

tony.quirk@marlborough.govt.nz

www.marlborough.govt.nz

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section 9(2)(a)

22 August 2022

Marlborough District Council

Attention: Mark Wheeler

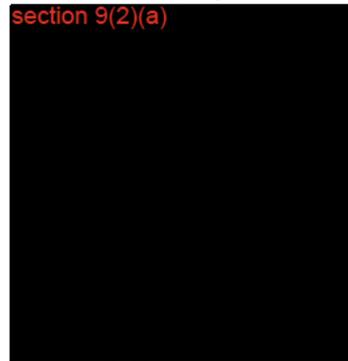
By email: mark.wheeler@marlborough.govt.nz

UPPER AVON FARMING GROUP LIMITED - LEGAL ROAD

- 1 We act for Upper Avon Farming Group Limited.
- 2 We have your correspondence of 2 August 2022 to Upper Avon Farming Group Limited and instructions to respond.
- 3 We wish to convey at the outset that Darren Clifford accepts that legal road is land under the control of Marlborough District Council and Upper Avon Farming Group Limited as the adjoining landowner has no rights to restrict or limit Marlborough District Council from their lawful activities or arrangements on those legal roads. For completeness that has never been Darren's intention or position.
- 4 Can you please advise if you would be available to meet with Darren and the writer to have a preliminary discussion regarding this matter. We suggest that matters may be able to be suitably advanced if we are able to clarify and discuss with you some of the likely issues.
- 5 We look forward to your comments.

Yours faithfully

section 9(2)(a)



section 9(2)(a)



Walking Access edits to email re access on legal road, The Teme 2983

From: Penny Wardle <Penny.Wardle@herengaanuku.govt.nz>

Sent: Thursday 25 August, 2022 05:36 pm

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Subject: Walking Access edits to email re access on legal road, The Teme 2983

Attachments: 1950 Plan Teme.pdf, H&S FAQ.pdf

Associations: 1686 Facilitate access - Teme River [1686]

Hello Tony, could you please send me a copy of Mark Wheeler's final reply to the Darren Clifford's March 3 email (as below).

Thank you,

Penny Wardle

Kaitohutohu ā Rohe | Regional Field Advisor
Aotearoa Outdoor Access Commission

section 9(2)(a)

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From: Penny Wardle
Sent: Wednesday, 30 March 2022 10:07 am
To: Tony Quirk-8077
Cc: Mark Wheeler-5030 ; James Gilmour
Subject: Walking Access edits to email re access on legal road, The Teme 2983

Hello Tony, thanks for the reassurance that this email has not been sent to Darren, despite appearances!

I've suggested some edits, including to the first sentence. I apologise for the delay in responding to Council's request for answers to questions from Mr Clifford. However, this is minor in the context of how long it's taken for this issue to be addressed. I believe this is the Commission's oldest live case, dating back to 2012. Also, DOC and NZWAC responded to

RADICH LAW

BARRISTERS AND SOLICITORS

DATE: 17 October 2022

TO: 1. Herenga ā Nuku Aotearoa
Attention: Penny Wardle

2. Department of Conservation
Attention: Roy Grose

CC: Marlborough District Council
Attention: Tony Quirk

All by email

FROM: Peter Radich

RE: **TEME ACCESS**

1. We refer to previous correspondence.
2. We would appreciate it if you could give us the information which we requested in our letter 22 August 2022.

Yours sincerely



P.J. Radich

email: peter@radichlaw.co.nz

PJR-022096-1375-36-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) LL.M (Duke) Attorney at Law (New York)

Sarah Wadworth PARTNER
LLB

Rebecca Smith ASSOCIATE
Reg. Legal Executive (Fellow, NZILE) &
Reg. Conveyancing Practitioner (NZSOCI)

Liese Belgrave SOLICITOR
LLB

The Teme information requested, 2983

From: Penny Wardle <Penny.Wardle@herengaanuku.govt.nz>

Sent: Monday 21 November, 2022 02:54 pm

To: 'peter@radichlaw.co.nz' <Peter@radichlaw.co.nz>

CC: Jeanette Thompson <jeanette@radichlaw.co.nz>, Roy Grose <rgrose@doc.govt.nz>, James Gilmour <jgilmour@doc.govt.nz>, Mary-Anne Baxter <Mary-Anne.Baxter@herengaanuku.govt.nz>

Subject: The Teme information requested, 2983

Attachments: 2983, Proposed Access, Avon Valley Road-A3 Topo Map (Zoomed) (1).pdf, Health-and-safety-for-landholders.pdf, 26642 - Teme GPS log 18 Sept 2015.pdf, 1950 Map.pdf, Access to Ferny Gair Mark Wheeler.docx

Associations: 1686 Facilitate access - Teme River [1686]

Kia ora, I have received Radich Law's email of 2/11/22 indicating that the Marlborough District Council is putting action on public access being obstructed at the Teme temporarily on hold, due to priority now being given to flooding issues.

Meanwhile, I will gather information requested by Radich Law of Herenga ā Nuku (previously the NZ Walking Access Commission) on 22/8/22. Could you please clarify what is required? It is hard to know what has already been provided to Radich Law by the Marlborough District Council. Also, given communication from Darren Clifford's lawyer, **section 9(2)(a)** that is client accepts legal road is under the control of the Marlborough District Council AND that Upper Avon Farming Group has no rights to restrict or limit Council from their lawful activities or arrangements, what further information is required?

I attach a letter from Marlborough District Council CE, Mark Wheeler, to Darren Clifford which I would assume the Council had already provided. There is also a 1950 Plan, GPS logs taken when Herenga ā Nuku, DOC and Marlborough DC representatives walked the legal road at the Teme plus proposed access plans and a Herenga ā Nuku joint publication on Health & Safety responsibilities of landholders. I note Roy Grose sent notes for a meeting between Council, DOC and Herenga ā Nuku on 18/10/22.

Here is a link to the updated version of [Herenga ā Nuku's Guidelines for the Management of Unformed Legal Roads](#).

There is general awareness that this access is not available to the public but Herenga ā Nuku (previously the Walking Access Commission) continues to hear from people who would highly value this access so look forward to the case being progressed.

Ngā mihi,



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Penny Wardle

Kaitohutohu ā-Rohe I Regional Field Advisor
Herenga ā Nuku Aotearoa
Outdoor Access Commission

section 9(2)(a)

[herengaanuku.govt.nz](mailto:penny.wardle@herengaanuku.govt.nz)



I work part-time and variable hours, and will respond to enquiries as soon as possible.

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RADICH LAW

BARRISTERS AND SOLICITORS

DATE: 5 December 2022

TO: 1. Herenga ā Nuku Aotearoa
Attention: Penny Wardle

2. Department of Conservation
Attention: Roy Grose

3. Marlborough District Council
Attention: Tony Quirk

All by email

FROM: Peter Radich

RE: **THE TEME ACCESS ISSUES**

1. Penny, thank you for your email 21 November 2022.
2. It is clear that landowners are not entitled to impede access. This situation appears to have been accepted by the landowner through his solicitor. However, it appears that the obstructions are still in place.
3. It would be helpful for somebody to go to the site and observe and record whether there are obstructions still in place. If they are, this is inconsistent with the landowners position as advised through his solicitor. If there are obstructions in place it would appear to be a simple matter for them to be required to be removed. If they are not removed the appropriate action can follow.

Yours sincerely



P.J. Radich
Email: peter@radichlaw.co.nz

PJR-022096-1375-46-V2

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

THE TEME ACCESS ISSUES

From: Jeanette Thompson <jeanette@radichlaw.co.nz>

Received Monday 17 April, 2023 12:17 pm

To: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>, rgrose@doc.govt.nz <rgrose@doc.govt.nz>

CC: Tony Quirk-8077 <tony.quirk@marlborough.govt.nz>

Subject: THE TEME ACCESS ISSUES

Attachments: 17042023120248-0001.pdf

Associations: 1686 Facilitate access - Teme River [1686]

Good afternoon

Please find attached correspondence from Peter Radich.

Regards

Jeanette Thompson

Legal Secretary and Administration

Please note my office hours are Monday to Friday 8:30 am – 12.30 pm.



Radich Law

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

Tel: 64 3 577 8450 Fax: 64 3 577 8451

Website: www.radichlaw.co.nz

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RADICH LAW

BARRISTERS AND SOLICITORS

DATE: 17 April 2023

TO: 1. Herenga ā Nuku Aotearoa - the Outdoor Access Commission
Attention: Ange van der Laan

2. Department of Conservation
Attention: Roy Grose

CC: Marlborough District Council
Attention: Tony Quirk
All by email

FROM: Peter Radich

RE: **THE TEME ACCESS ISSUES**

1. We **attach** a copy of our letter to you of 5 December 2022.

2. Could you please let us know what the situation is on the ground and whether there are in fact obstructions to access.

Yours sincerely



P.J. Radich
email: peter@radichlaw.co.nz

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PJR-022096-1375-51-V1

21 Bells Road, RD2, Blenheim 7272. PO Box 842, Blenheim 7240, Marlborough, New Zealand.
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Peter Radich PARTNER
ONZM LLB

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

Sarah Wadworth PARTNER
LLB

Rebecca Smith ASSOCIATE
Reg. Legal Executive (Fellow, NZILE) &

RADICH LAW
BARRISTERS AND SOLICITORS

COPY

DATE: 5 December 2022

TO: 1. Herenga ā Nuku Aotearoa

Attention: Penny Wardle

2. Department of Conservation

Attention: Roy Grose

3. Marlborough District Council

Attention: Tony Quirk

All by email

FROM: Peter Radich

RE: **THE TEME ACCESS ISSUES**

1. Penny, thank you for your email 21 November 2022.

2. It is clear that landowners are not entitled to impede access. This situation appears to have been accepted by the landowner through his solicitor. However, it appears that the obstructions are still in place.

3. It would be helpful for somebody to go to the site and observe and record whether there are obstructions still in place. If they are, this is inconsistent with the landowners position as advised through his solicitor. If there are obstructions in place it would appear to be a simple matter for them to be required to be removed. If they are not removed the appropriate action can follow.

Yours sincerely



P.J. Radich

Email: peter@radichlaw.co.nz

PJR-022096-1375-46-V2

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

THE TEME ACCESS ISSUES - PRIVILEGED COMMUNICATION

From: Jeanette Thompson <jeanette@radichlaw.co.nz>

Received Wednesday 31 May, 2023 12:49 pm

To: jjames@doc.govt.nz <jjames@doc.govt.nz>, Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>, Tony Quirk-8077 <tony.quirk@marlborough.govt.nz>

Subject: THE TEME ACCESS ISSUES - PRIVILEGED COMMUNICATION

Attachments: 31052023110950-0001.pdf

Associations: 1686 Facilitate access - Teme River [1686]

Good afternoon

Please find attached correspondence from Peter Radich.

Regards

Jeanette Thompson

Legal Secretary and Administration

Please note my office hours are Monday to Friday 8:30 am – 12.30 pm.



Radich Law

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

Tel: 64 3 577 8450 Fax: 64 3 577 8451

Website: www.radichlaw.co.nz

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RADICH✠**LAW**
BARRISTERS AND SOLICITORS

DATE: 31 May 2023

TO: 1. Department of Conservation

Attention: Jennifer James

2. Herenga ā Nuku Aotearoa - the Outdoor Access Commission

Attention: Ange van der Laan

3. Marlborough District Council

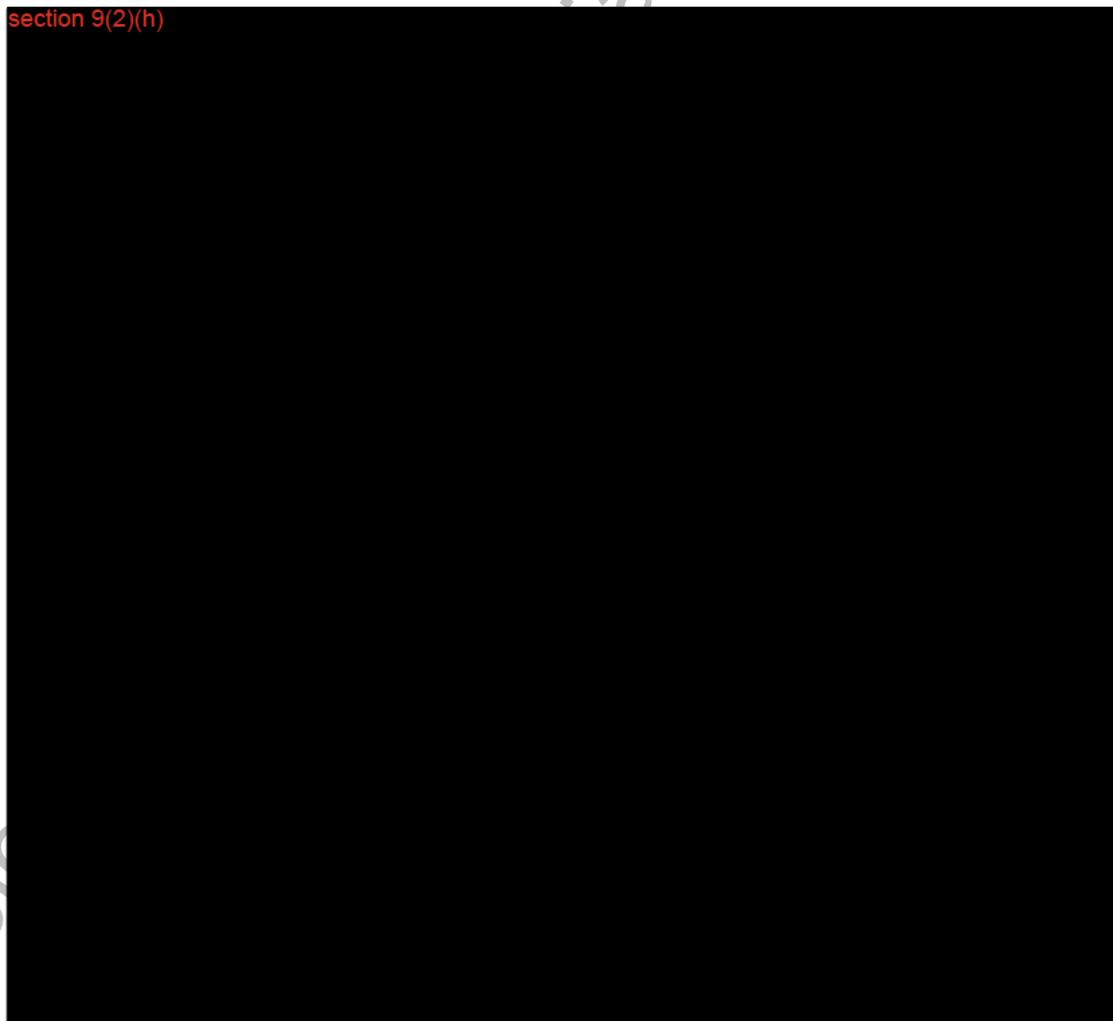
Attention: Tony Quirk

All by email

FROM: Peter Radich

RE: **THE TEME ACCESS ISSUES – PRIVILEGED COMMUNICATION**

section 9(2)(h)



PJR-022096-1375-67-V2

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

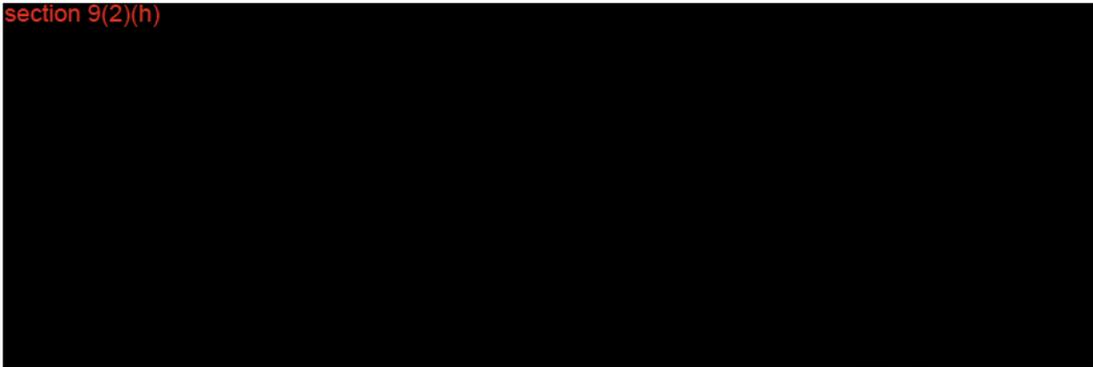
Peter Radich PARTNER
ONZM LLB

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

Sarah Wadworth PARTNER
LLB

Rebecca Smith ASSOCIATE
Reg. Legal Executive (Fellow, NZILE) &
Solicitor

section 9(2)(h)



Yours sincerely

A handwritten signature in black ink, appearing to read 'P.J. Radich', is written above the typed name.

P.J. Radich
email: peter@radichlaw.co.nz

Released under the Official Information Act

RE: THE TEME ACCESS ISSUES - PRIVILEGED COMMUNICATION

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Sent: Tuesday 13 June, 2023 12:15 pm

To: Jeanette Thompson <jeanette@radichlaw.co.nz>, jjames@doc.govt.nz <jjames@doc.govt.nz>, Tony Quirk-8077 <tony.quirk@marlborough.govt.nz>

CC: Phil Culling <phil.culling@herengaanuku.govt.nz>

Subject: RE: THE TEME ACCESS ISSUES - PRIVILEGED COMMUNICATION

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Kia ora koutou

Herenga Ā Nuku has agreed to contribute \$1000.

Our Deputy Chief Executive has advised:

Please note, this contribution, of \$1,000 plus GST is a full and final payment from Herenga Ā Nuku, in relation to this matter. It is to help cover any outstanding legal costs and disbursements. We understand that the Marlborough District Council and Department of Conservation are also making similar payments to bring some resolution to this long outstanding issue.

Please send an invoice asap so that it can be processed this financial year.

Ngā mihi nui

Ange



Ange van der Laan

Kaitohutohu ā Rohe I Regional Field Advisor
+64 274844677

I work part time and variable hours, and will respond to enquiries as soon as possible.

From: Jeanette Thompson

Sent: Wednesday, May 31, 2023 12:43 PM

To: jjames@doc.govt.nz; Ange van der Laan ; Tony Quirk-8077

Subject: THE TEME ACCESS ISSUES - PRIVILEGED COMMUNICATION

Good afternoon

Please find attached correspondence from Peter Radich.

Regards

Jeanette Thompson

Legal Secretary and Administration

Please note my office hours are Monday to Friday 8:30 am – 12.30 pm.



Radich Law

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

Tel: 64 3 577 8450 Fax: 64 3 577 8451

Website: www.radichlaw.co.nz

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Released under the Official Information Act

From: Kirsty Baldwin-5127 <Kirsty.Baldwin@marlborough.govt.nz> **On Behalf Of** Tony Quirk-8077
Sent: Thursday, June 29, 2023 11:56 AM
To: 'jjames@doc.govt.nz' <jjames@doc.govt.nz>; Joy Yang <joy.yang@herengaanuku.govt.nz>
Cc: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>; 'Loren@aanuleu.govt.nz' <Loren@aanuleu.govt.nz>
Subject: The Teme Access Issues

I refer to the indications of agreement to a contribution of \$1,000 towards the survey.

I see a suggestion in the case of Walking Access that this is full and final. That is not in line with an earlier approval that was given for a contribution of up to \$3,000 for the legal costs which may eventually be needed. **Attached** the contract agreement.

This current contribution was solely related to the survey necessary as part of any exercise.

Invoices for DOC and the Commission related to the survey aspects based on that understanding are being actioned and will be sent to you soon.

Tony Quirk

District Secretary



Phone: 03 520 7400

15 Seymour Street, PO Box 443

Blenheim 7240, New Zealand

tony.quirk@marlborough.govt.nz

www.marlborough.govt.nz

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FW: Invoice 184035

From: Kirsti Douglas
Sent: Friday, June 30, 2023 10:48 AM
To: Tony Quirk-8077
Cc: Ange van der Laan ; Ric Cullinane
Subject: FW: Invoice 184035

Kia ora Tony, in Ange's absence, I'm acknowledging receipt of the attached invoice for survey costs.

I can also confirm that our earlier agreement to fund up to \$3k of legal costs, associated with the Teme access issue, still stands.

Nga mihi



Kirsti Douglas

Pouwhakahaere ā-motu - Kōkiri | National Operations Manager
[027 815 8530](tel:0278158530)

From: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>
Sent: Friday, June 30, 2023 9:52 AM
To: Joy Yang <joy.yang@herengaanuku.govt.nz>
Cc: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>
Subject: FW: Invoice 184035

Further to my email of 29 June attached the invoice

Tony Quirk

From: Lyn van Baarlen <Lyn.vanBaarlen@marlborough.govt.nz>
Sent: Friday, June 30, 2023 8:56 AM
To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>
Subject: Invoice 184035

Regards

Lyn van Baarlen

RADICH LAW

BARRISTERS AND SOLICITORS

DATE: 4 July 2023

TO: Marlborough District Council
Attention: Tony Quirk

CC: 1. Department of Conservation
Attention: Jennifer James

2. Herenga ā Nuku Aotearoa - the Outdoor Access Commission
Attention: Ange van der Laan

All by email

FROM: Peter Radich

RE: **THE TEME ACCESS ISSUES**

1. **Attached** is the plan on aerial photograph received from Scope Surveying.
2. It is clear that a significant part of the gravel track is on private land. The obstructions appear to be on private land.
3. Would those of you who are familiar with the physical situation let us have an explanation of how the access issues can be resolved. Some fencing will have to be taken down.

Yours sincerely

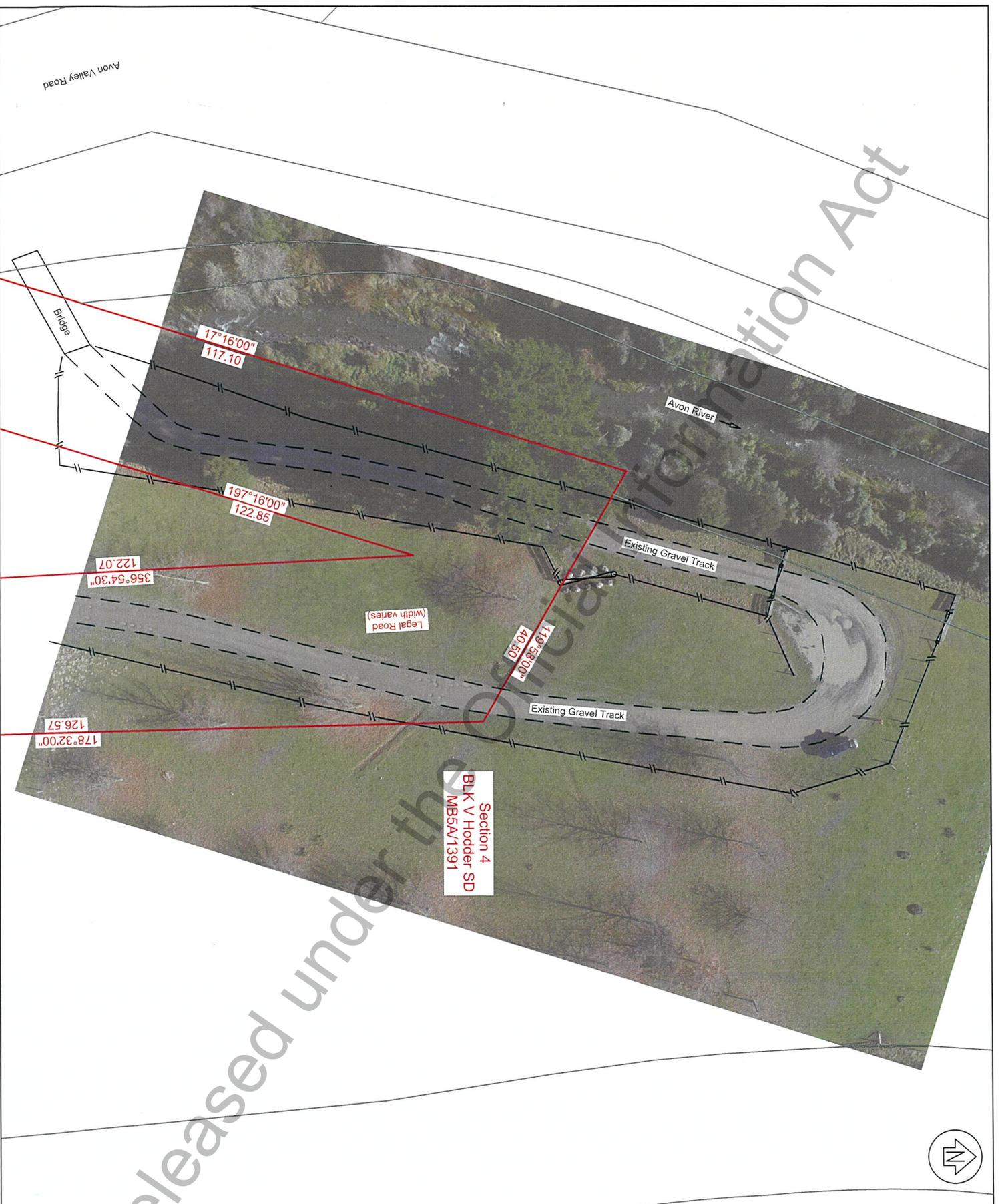


P.J. Radich
email: peter@radichlaw.co.nz

PJR-022096-1375-102-V1

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Notes
 Horizontal Origin
 Mark: IS X DP 319208
 Marlborough 2000



Section 4
 BLK V Hodder SD
 MB5A/1391

Client:
 Marlborough District Council

Project Title:
 Section 4 Blk V Hodder SD
 Theme Access - 715 Avon Valley Road
 Waihopa

Sheet Title:
 Site Survey



7168 Seymour Street, Blenheim 7201
 www.scope-surveying.co.nz
 (03) 577 6755

Scale:	1:500	Paper Size:	A3	Drawn By:	BW
Date:	Mon Jul 3 15:37:32 2023				
Project No:	23076	Sheet No.:	3201	Rev.:	A

RE: THE TEME ACCESS ISSUES

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Sent: Wednesday 19 July, 2023 11:44 am

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>, Jennifer James <jjames@doc.govt.nz>

CC: Jeanette Thompson <jeanette@radichlaw.co.nz>

Subject: RE: THE TEME ACCESS ISSUES

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Kia ora Tony & Jenn

Am just following up on Peter Radich email with aerial image and survey overlay:

- Advising boulders/obstructions appear to be on private land
- Asking what the suggested remedy is for access over road parcel – I assume this would require a short section of formed road?

Look forward to an update.

Ngā mihi

Ange



Ange van der Laan

Kaitohutohu ā Rohe | Regional Field Advisor
+64 274844677

I work part time and variable hours, and will respond to enquiries as soon as possible.

From: Jeanette Thompson

Sent: Tuesday, July 4, 2023 12:13 PM

To: Tony Quirk-8077

Cc: jjames@doc.govt.nz; Ange van der Laan

Subject: THE TEME ACCESS ISSUES

Good afternoon

Please find attached correspondence from Peter Radich.

Regards

Jeanette Thompson

Legal Secretary and Administration

Please note my office hours are Monday to Friday 8:30 am – 12.30 pm.

RADICH LAW
BARRISTERS AND SOLICITORS

Radich Law

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

Tel: 64 3 577 8450 Fax: 64 3 577 8451

Website: www.radichlaw.co.nz

RADICH LAW

BARRISTERS AND SOLICITORS

DATE: 21 July 2023

TO: 1. Marlborough District Council

Attention: Tony Quirk

2. Department of Conservation

Attention: Jennifer James and Roy Grose

3. Herenga ā Nuku Aotearoa - the Outdoor Access Commission

Attention: Ange van der Laan

All by email

FROM: Peter Radich

RE: **THE TEME ACCESS**

1. We will now set out our understanding of the physical situation as it relates to the legal road. To do so we will refer to the Scope Surveying plan which overlays an aerial photograph.
2. The plan shows the legal road bounded by red lines. It shows that the legal road runs from the south-eastern area within the photograph northwards and then doubles back and heads in a south-westerly direction. The legal road is much wider than any formed accessway would need to be.
3. If a member of the public wishes to access the Ferny Gair Reserve they would need to go along the path of the legal road starting in the south-eastern corner of the photograph. They would then head northwards and then double back and head in a south-westerly direction.
4. However, if you look at the aerial photograph you will see that there is an obstruction in the form of a fence. That fence runs in a generally south to north direction and heads towards the boulder obstructions. There is no gate in that fence to the south of the boulder obstructions. Therefore, the way along the legal road is blocked by the fence. It is not blocked by the boulders alongside the gate to the north as these are on private property.
5. The ground conditions look to be stoney and we doubt whether any road formation would be required for access to be gained. What is required for access to be gained is the removal of the fence off the legal road. The whole of the fence may not need to be removed. It maybe enough for a gate to be put in place within the fence and to the south of where the boulders are situated.

PJR-022096-1375-111-V2

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Peter Radich PARTNER
ONZM LLB

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

Sarah Wadworth PARTNER
LLB

Rebecca Smith ASSOCIATE
Reg. Legal Executive (Fellow, NZILE) &
Reg. Conservation Practitioner (NZCAC)

6. We think that the way forward is for Council to put the factual situation before the landowner and request engagement in the removal of the fence or at least the firming up of access by the placement of a gate of double gates in the fence line. Normally public roads are not able to be gated but a sensible outcome may be to overlook that technicality in the meantime and have gates without locks and signage indicating that the gates are able to be opened by the public.
7. A draft letter from Council is **attached**.

Yours sincerely



P.J. Radich
email: peter@radichlaw.co.nz

Released under the Official Information Act

DRAFT

MARLBOROUGH DISTRICT COUNCIL

[To the Landowner]

THE TEME ACCESS

The issue of access to the Teme and Ferny Gair needs to be resolved. Currently access along the public road is obstructed.

Council in conjunction with Department of Conservation and Herenga ā Nuku has commissioned a survey to determine the precise location of the public road.

Attached is a plan overlaid on an aerial photograph. This plan prepared by Scope Surveying has red lines showing the boundary of the legal road.

Currently, access along the legal road is obstructed by a fence running southwards from the gate where boulders are placed. The boulders are on private property.

Council, DOC and Herenga ā Nuku have duties to the public to allow physical access along legal roads.

We wish to engage with you to discuss the opening up of the fence which currently obstructs access along the legal road. It is not permissible for landowners to place gates across legal roads as of right but gates can in some situations be allowed. Our suggestion is that we look to establishing a double gate in the fence line. This gate could not be locked. There would need to be signage indicating that public access through the gates would be available. That would result in a situation where the public would be able to have practical access along the legal road.

May we please discuss these issues. The obstructions to access will have to be removed.

Yours sincerely

Notes

Horizontal Origin
Mark: IS X DP, 319208
Marlborough 2000

Client:
Marlborough District Council

Project Title:
Section 4 Blk V Hodder SD
Teme Access - 715 Avon Valley Road
Wainhopai

Sheet Title:
Site Survey

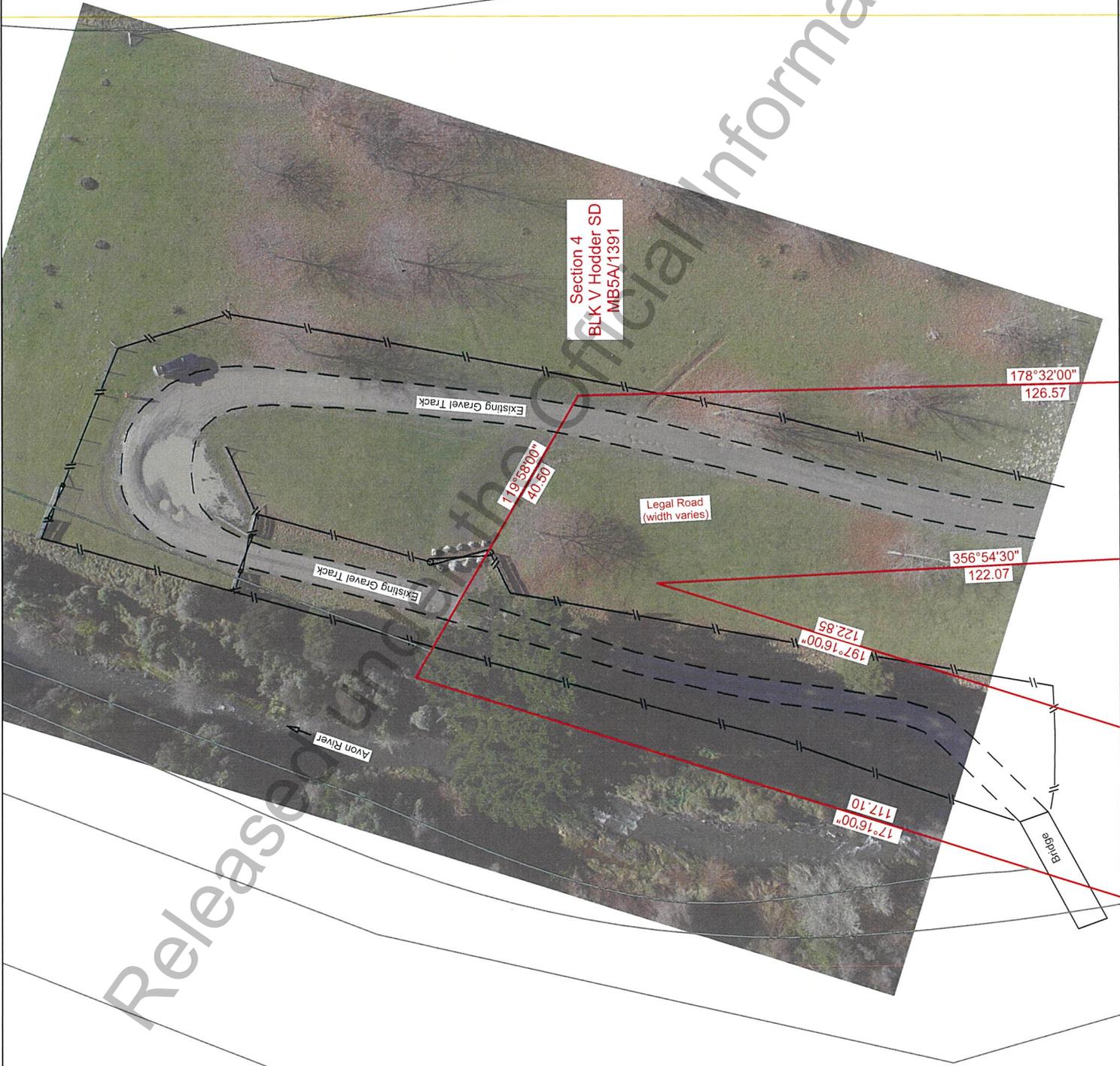


768 Seymour Street, Blenheim 7201
www.scopesurveying.co.nz
(03) 577 6755

Scale: 1:500
Paper Size: A3
Drawn By: BW

Date: Mon Jul 3 15:37:32 2023

Project No: 23076
Sheet No: 3201
Rev: A



Release of this information is official information

Avon Valley Road

RADICH  **LAW**
BARRISTERS AND SOLICITORS

DATE: 28 July 2023

TO: Marlborough District Council

Attention: Tony Quirk

CC: 1. Department of Conservation

Attention: Jennifer James and Roy Grose

2. Herenga ā Nuku Aotearoa - the Outdoor Access Commission

Attention: Ange van der Laan

All by email

FROM: Peter Radich

RE: **THE TEME ACCESS**

1. Tony, we have seen the latest correspondence.
2. We think that Councils role is to help sort out the obstruction on the Clifford property. Once that fence is down and the public can move onto the route, we think that Councils duties and functions will have been discharged.
3. The use of the marginal strip was well known and accepted by DOC some years ago and as we understood it, Council was not involved in that aspect.
4. The draft letter we propose be sent to the landowner was approved by DOC but not by Herenga ā Nuku so far.
5. We think that Council should be focusing on dealing with the landowner and opening up the access by the removal of the fence. Once that has been achieved, we think that the ongoing issues with access further up are the concern of the Department and the Commission not Council.
6. Therefore, unless we hear from the Commission against sending out the letter to the landowner, we think you should send it out next week and then concentrate on getting the fence down and taking Councils involvement to an end.

Yours sincerely


P.J. Radich
email: peter@radichlaw.co.nz

PJR-022096-1375-122-V2

RE: THE TEME ACCESS

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Sent: Friday 28 July, 2023 01:54 pm

To: Jeanette Thompson <jeanette@radichlaw.co.nz>, Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

CC: jjames@doc.govt.nz <jjames@doc.govt.nz>, rgrose@doc.govt.nz <rgrose@doc.govt.nz>

Subject: RE: THE TEME ACCESS

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Kia ora koutou

Thank you for your email and brief to address obstruction of unformed legal road leading to the Teme River/Ferny Gair Conservation Area. Herenga ā Nuku is pleased to support MDC and DOC in endeavours to ensure public access along the ULR leading to Ferny Gair Conservation Area is unimpeded.

It is apparent that, as the road continues there are other areas where the legal road parcel and formed track do not align. See area marked by red circle in the clip below for just one instance of this. Our filenotes indicate that DOC has confidence in creating a track utilising ULR and marginal strip so I defer to their knowledge on the ground however, it would seem sensible to address all possible issues with ULR if the ultimate outcome is to facilitate unimpeded public access to the Ferny Gair.



With regard gates on roads, the Commission's "Guidelines for the Management of Unformed Legal Roads" includes clarification of situations where gates may be used on roads – refer S 6.3.1:

To manage, protect and contain livestock, a landholder may construct gates and cattle stops across unformed legal roads, but only with the council's written permission. Section 344 of the Local Government Act 1974 and the Gates and Cattle Stops Order 1955 provide for this. Any gates across a road must not be locked and a board with the words "Public Road" legibly printed must be affixed to each side of the gate.

Access the full publication here - <https://www.herengaanuku.govt.nz/assets/Publication/Files/ULR-Guidelinesfor-web.pdf>

Ngā mihi

Ange



Ange van der Laan

Kaitohutohu ā-Rohe I Regional Field Advisor
+64 274844677

I work part-time and variable hours, and will respond to enquiries as soon as possible.

From: Jeanette Thompson
Sent: Friday, July 28, 2023 12:36 PM
To: Tony Quirk-8077
Cc: jjames@doc.govt.nz; rgrose@doc.govt.nz; Ange van der Laan
Subject: THE TEME ACCESS

Good afternoon

Please find attached correspondence from Peter Radich.

Regards

Jeanette Thompson

Legal Secretary and Administration

Please note my office hours are Monday to Friday 8:30 am – 12.30 pm.



Radich Law

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

Tel: 64 3 577 8450 Fax: 64 3 577 8451

Website: www.radichlaw.co.nz

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Released under the Official Information Act

The Teme Access

From: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Received Tuesday 26 September, 2023 11:22 am

To: 'jjames@doc.govt.nz' <jjames@doc.govt.nz>, 'rgrose@doc.govt.nz' <rgrose@doc.govt.nz>, 'gfinch@doc.govt.nz' <gfinch@doc.govt.nz>, Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Subject: The Teme Access

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Some months ago Peter Radich prepared a letter to be sent to the landowner. The letter required the landowner to open up the fence across the public road. It suggested that unlocked gates maybe accepted if accompanied by signage.

That aligns with any duty Council has.

For those wanting to use the accessway further up, it is really up to DOC and Herenga ā Nuku to help should they wish. In our view Council will have done what it can fairly be expected to do, but one would like to think the landowner maybe compliant and helpful, but if not then further action can then be taken as indicated some time ago.

I am just wanting the organisations to understand Council's position before any letter is sent to the owner.

We don't want expectations to be held that go beyond what Council is prepared to deal with.

Tony Quirk

District Secretary



Phone: 03 520 7400 | DDI: 03 520 7429

15 Seymour Street, PO Box 443

Blenheim 7240, New Zealand

tony.quirk@marlborough.govt.nz

www.marlborough.govt.nz

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Building on ULR

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Sent Wednesday 18 October, 2023 10:49 am

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

CC: Gavin Finch <gfinch@doc.govt.nz>, Jennifer James <jjames@doc.govt.nz>

Subject: Building on ULR

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Kia ora Tony

Following a meeting I had with DOC last week during which we discussed access to the Teme via ULR adjoining Upper Avon Farms Ltd, I am writing to seek some clarification of a building that appears to impede access over the ULR. See highlighted area in clip below. I wonder if you can please help - is this building is consented and if so, when did this occur and is there a Licence to Occupy the ULR?



Ngā mihi mahana

Ange



Ange van der Laan

Connecting people
Connecting places

Kaitohutohu ā Rohe I Regional Field Advisor
Herenga ā Nuku Aotearoa
Outdoor Access Commission

[+64 274844677](tel:+64274844677)
herengaanuku.govt.nz



I work part time and variable hours, and will respond to enquiries as soon as possible.



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Released under the Official Information Act

RE: Building on UIR - Upper Avon Farm Ltd

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Sent: Thursday 26 October, 2023 09:28 am

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Subject: RE: Building on UIR - Upper Avon Farm Ltd

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Kia ora Tony

Thanks for coming back to me on this. Rather than being identified as the "complainant" I would prefer to be identified as the "enquirer".

The reason for the enquiry is that Herenga Ā Nuku/Outdoor Access Commission, is working with DOC and MDC to identify public access to the Ferny Gair Conservation Area. The building is a barrier to legal public access along the road parcel.

Obviously, unconsented/unlicenced buildings on public land are not uncommon and do not need to stand in the way of public access providing the adjoining landowner is happy to work with us to ensure there is practical alternative access.

Ngā mihi

Ange



Ange van der Laan

Kaitohutohu ā-Rohe I Regional Field Advisor
+64 274844677

I work part-time and variable hours, and will respond to enquiries as soon as possible.



From: Bridget McCulloch-8127 **On Behalf Of** Tony Quirk-8077

Sent: Wednesday, October 25, 2023 3:22 PM

To: Ange van der Laan

Subject: Building on UIR - Upper Avon Farm Ltd

Ange, I refer to your email of 18 October. There is no licence in place.

Building have still to come back to me about any consent though it maybe the building is exempt from any consent requirement.

What we would normally do is communicate with the owner seeking comments based on a complaint received.

Normally a query back asks for identity of the complainant. I am checking at this stage whether you have any objection to us releasing you as the complainant in this instance?

Thanks

Tony Quirk

District Secretary



**MARLBOROUGH
DISTRICT COUNCIL**

Phone: 03 520 7400 | DDI: 03 520 7429

15 Seymour Street, PO Box 443

Blenheim 7240, New Zealand

tony.quirk@marlborough.govt.nz

www.marlborough.govt.nz

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Released under the Official Information Act

Building on Unformed Legal Road - Upper Avon Farming Group Ltd

From: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Received: Friday 27 October, 2023 11:19 am

To: 'darrer' **section 9(2)(a)**

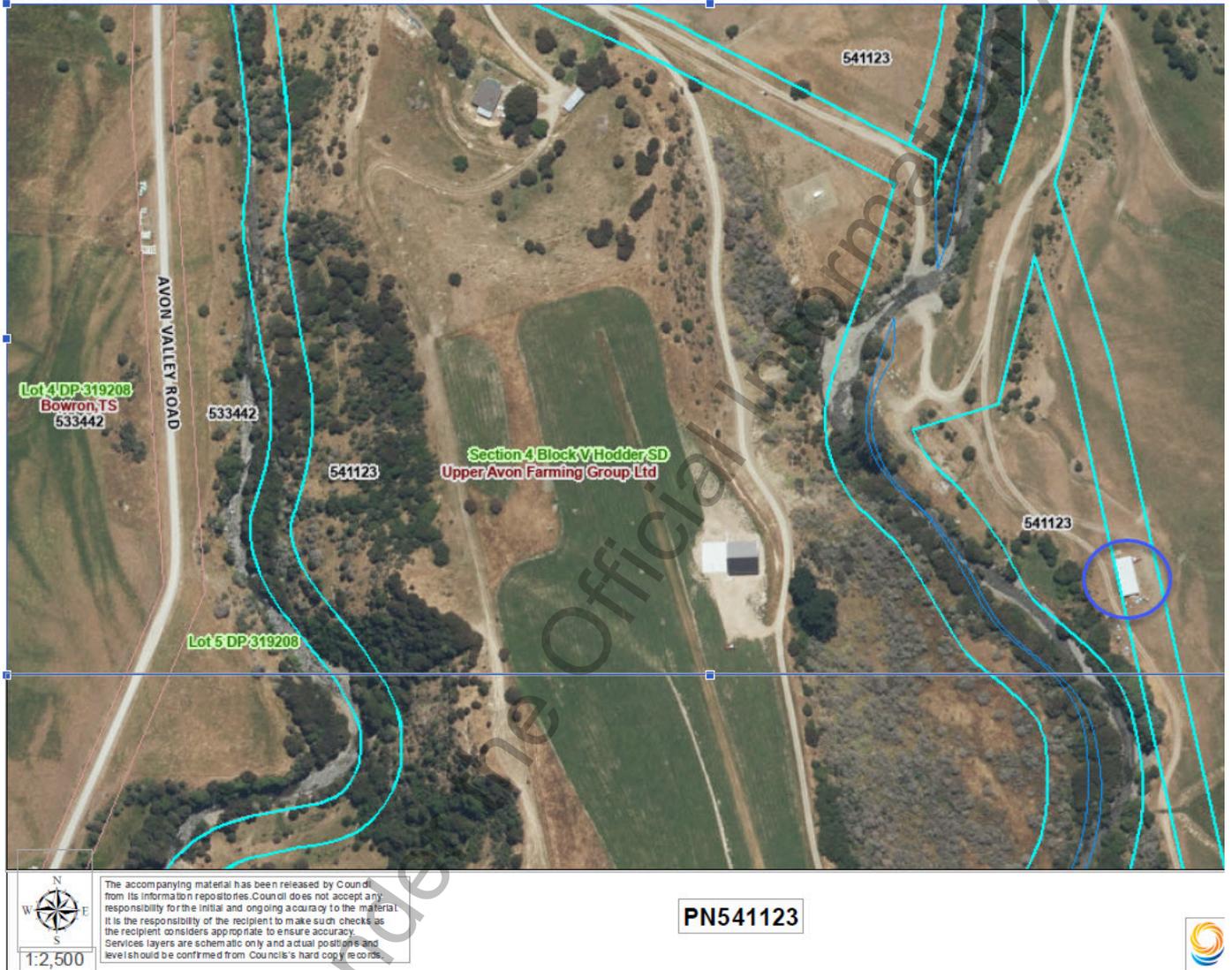
CC: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Subject: Building on Unformed Legal Road - Upper Avon Farming Group Ltd

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Attached is an aerial print which has a blue circle outlining a building that sits on unformed legal road.



Herenga ā Nuku (Walking Access) has been working with DOC to identify public access to the Ferny Gair conservation area.

As part of that they see the building as a barrier to local public access along the road.

We are unsure what the nature of the building might be. We have been unable to find any reference to a Licence to Occupy the road.

The Herenga ā Nuku field advisor acknowledges that the building may not impede public access, but it may need the landowner to work with the organisation and DOC to ensure there is practical alternative access.

We ask that you liaise with the field advisor about the issue.

We have copied her into this email, so you have her contact details.

Thanks

Tony Quirk
District Secretary



Phone: 03 520 7400 | DDI: 03 520 7429

15 Seymour Street, PO Box 443

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RE: Building on UIR - Upper Avon Farm Ltd

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Sent: Thursday 16 November, 2023 12:51 pm

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Subject: RE: Building on UIR - Upper Avon Farm Ltd

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Kia ora Tony

I am getting some heat around this access and wonder if you can please advise if the legality of the building on ULR has been established by your property/building team?

Ngā mihi

Ange



Ange van der Laan

Kaitohutohu ā-Rohe I Regional Field Advisor
+64 274844677

I work part-time and variable hours, and will respond to enquiries as soon as possible.



From: Bridget McCulloch-8127 **On Behalf Of** Tony Quirk-8077

Sent: Wednesday, October 25, 2023 3:22 PM

To: Ange van der Laan

Subject: Building on UIR - Upper Avon Farm Ltd

Ange, I refer to your email of 18 October. There is no licence in place.

Building have still to come back to me about any consent though it maybe the building is exempt from any consent requirement.

What we would normally do is communicate with the owner seeking comments based on a complaint received.

Normally a query back asks for identity of the complainant. I am checking at this stage whether you have any objection to us releasing you as the complainant in this instance?

Thanks

Tony Quirk

District Secretary



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Released under the Official Information Act

Building on UIR - Upper Avon Farm

From: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Received Friday 17 November, 2023 09:01 am

To: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Subject: Building on UIR - Upper Avon Farm

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

I refer to your email of 16 November and note your email of 30 October to Darren Clifford indicating you would be in touch with him to discuss the building.

At this stage I have yet to hear from the Building team.

The Duty Building Officer has been away **section 9(2)(a)**. I understand he may now be back so I will check with him, though he may have nothing to report since it might well be the structure was exempt from the need for any consent.

Once I hear anything from the Building team I will be back in touch.

Tony Quirk

District Secretary



Phone: 03 520 7400 | DDI: 03 520 7429

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RE: The Teme Access

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Sent: Wednesday 22 November, 2023 10:59 am

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>, 'jjames@doc.govt.nz' <jjames@doc.govt.nz>, 'rgrose@doc.govt.nz' <rgrose@doc.govt.nz>, 'gfinch@doc.govt.nz' <gfinch@doc.govt.nz>

Subject: RE: The Teme Access

Attachments: 1686-Teme access to Ferny Gair Conservation Area 6.12.19 v2 (3).pdf

Associations: 1686 Facilitate access - Teme River [1686]

Kia ora koutou

Tony – this case is generating a bit of interest at the moment so very timely.

As has been previously determined by DOC using a handheld GPS, legal access is possible up to where the legal road ends along the Teme River – from there it is a half hour walk into the Ferny Gair Conservation Area. From previous correspondence on this matter it is clear that DOC has articulated a desire to ensure this access is available and obvious to the public. See attached notes. The recent survey MDC commissioned has provided certainty on public land adjoining the entrance of Upper Avon Farming Group property.

However, further action is required to ensure public access to the Ferny Gair is unimpeded by the adjoining landowner. Because access will require use of both road parcel (managed by MDC) and marginal strip (managed by DOC) it is important that MDC continues to work with DOC and Herenga ā Nuku to:

- ensure the identified entrance access is implemented
- identify the road beyond the entrance
- reinforce the public's rights to use the road
- manage issues, if any, with the adjoining landowner.

We all have a role to play in ensuring the public can safely gain access over public land to public land and by presenting a united front, can likely achieve greater gains.

Ngā mihi nui

Ange



Ange van der Laan

Kaitohutohu ā-Rohe I Regional Field Advisor
+64 274844677

I work part-time and variable hours, and will respond to enquiries as soon as possible.



From: Bridget McCulloch-8127 **On Behalf Of** Tony Quirk-8077

Sent: Thursday, November 16, 2023 10:27 AM

To: 'jjames@doc.govt.nz' ; 'rgrose@doc.govt.nz' ; 'gfinch@doc.govt.nz' ; Ange van der Laan

Subject: The Teme Access

I refer to my email of 26 September, copy **attached**.

I am waiting for confirmation that your organisations understand Council's position before any communication is sent to the owner from Council.

Thanks

Tony Quirk

District Secretary



Phone: 03 520 7400 | DDI: 03 520 7429

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RE: The Teme (Upper Avon Farming Group Ltd) Building Query

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Sent: Wednesday 22 November, 2023 11:13 am

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

CC: Gavin Finch <gfinch@doc.govt.nz>, Jennifer James <jjames@doc.govt.nz>

Subject: RE: The Teme (Upper Avon Farming Group Ltd) Building Query

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Kia ora Tony

Thank you for confirming the building does not have building consent and likely does not require it if it is a pole shed. As the building is sited on a legal road (with no agreement by MDC) can you advise what corrective actions MDC could take to ensure public access is not impeded by it? Some Council's issue a licence to occupy in such cases but there is no legal authority to do issue an LTO on road.

It would be beneficial to public access if MDC came to an agreement with the landowner which provided for public access rights while allowing the shed to remain on public land.

Ngā mihi nui

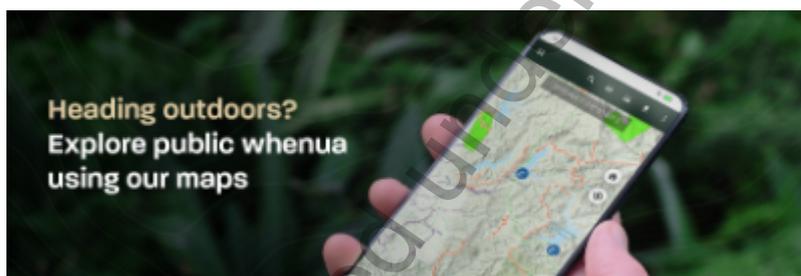
Ange



Ange van der Laan

Kaitohutohu ā-Rohe | Regional Field Advisor
+64 274844677

I work part-time and variable hours, and will respond to enquiries as soon as possible.



From: Bridget McCulloch-8127 **On Behalf Of** Tony Quirk-8077

Sent: Wednesday, November 22, 2023 8:18 AM

To: Ange van der Laan

Subject: The Teme (Upper Avon Farming Group Ltd) Building Query

The Building section indicate they can find no reference for any consent for the building in question. All other buildings on the property appear to have consents. The Duty Building Control Officer suspects the building maybe an exempt pole shed.

I note your email to Mr Clifford indicated you intended to make contact with him. Any discussions you have no doubt will clarify the type of building in question.

Tony Quirk

District Secretary



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The Teme - Upper Avon Farming Group Ltd - Building Query

From: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Received Wednesday 22 November, 2023 03:19 pm

To: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>, 'gfinch@doc.govt.nz' <gfinch@doc.govt.nz>, 'jjames@doc.govt.nz' <jjames@doc.govt.nz>

Subject: The Teme - Upper Avon Farming Group Ltd - Building Query

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

I refer to your email of 22 November and indicate there is no intention by us at this stage to take any action.

We outlined to Darren Clifford the situation raised by you. The email was copied into you. You then communicated to Darren on 30 October indicating you would get in touch to discuss.

That seems to us to be the appropriate action with no action taken by us until after those discussions.

At that point Council could consider what, if any, action it might take.

Tony Quirk

District Secretary



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RE: Building on Unformed Legal Road - Upper Avon Farming Group Ltd

From: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>
Received: Thursday 30 November, 2023 10:27 am
To: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>
CC: section 9(2)(a)
Subject: RE: Building on Unformed Legal Road - Upper Avon Farming Group Ltd
Attachments:
Associations: 1686 Facilitate access - Teme River [1686]

Noted
 I will add to the 'to action' pile.
 Tony

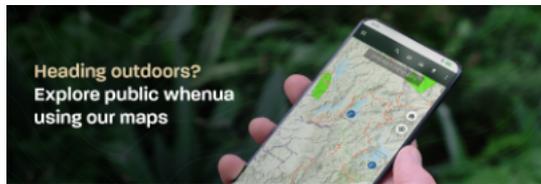
From: Ange van der Laan
Sent: Thursday, November 30, 2023 10:20 AM
To: Tony Quirk-8077
Cc: section 9(2)(a)
Subject: RE: Building on Unformed Legal Road - Upper Avon Farming Group Ltd

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Kia ora Tony
 See below email from section 9(2)(a) acting for Darren Clifford/Upper Avon Farms Ltd. Can you please provide section 9(2)(a) with the survey MDC commissioned per his request?
 Ngā mihi
 Ange

	<p>Ange van der Laan</p> <p>Kaitohutohu ā-Rohe Regional Field Advisor +64 274844677</p>
----------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------

I work part-time and variable hours, and will respond to enquiries as soon as possible.



From: section 9(2)(a)
Sent: Thursday, November 30, 2023 8:34 AM
To: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>
Subject: FW: Building on Unformed Legal Road - Upper Avon Farming Group Ltd

Hello Ange

We act for Upper Avon Farming Group Limited.

We have been forwarded your email below. We will take instructions from Darren and respond shortly.

You mentioned there has been some survey work undertaken to ascertain the entranceway of the Teme. Do you have any survey plans in respect of that or plans that show the other areas in question (other than the plan attached to your email).

Regards,

section 9(2)(a)
 Partner

section 9(2)(a)

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>
Sent: Wednesday, November 22, 2023 4:28 PM
To: Darren Clifford <darren@marlborough.govt.nz> [redacted]
Cc: Jennifer James <jjames@doc.govt.nz>; Gavin Finch <gfinch@doc.govt.nz>; Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>
Subject: RE: Building on Unformed Legal Road - Upper Avon Farming Group Ltd

Kia ora Darren

I am following up on my email of 30/10. I am the regional field advisor to Herenga ā Nuku and as such am aware that there is significant public interest in identifying marginal strip and legal road parcel adjoining your land which provide legal access to the Ferny Gair Conservation Area.

Marlborough District Council (MDC) has recently confirmed by survey legal access adjoining the entrance to your property and, as I understand, will work with you and DOC to install a gate in the fence line and ensure signage is erected.

MDC has also confirmed the building on legal road has no consent – likely this is a pole shed exempt from a building consent but it's location on public road makes it illegal. See pink area in attached map clip (note also green areas are Crown land managed by DOC, purple areas are road parcels managed by MDC and blue areas are river bodies).

The next step for all parties is to mark out the access along the road parcel and marginal strip to ensure the public remain on public land. DOC has previously investigated this and concluded it is achievable. Although it is clear it is possible to legally access the Ferny Gair by marginal strip and road, we would like to work with you on this. I suggest that all parties meet in the next few weeks so please let me know your availability and we can go from there.

Ngā mihi

Ange



**Herenga
ā Nuku**
AOTEAROA

Ange van der Laan

Kaitohutohu ā-Rohe I Regional Field Advisor
+64 274844677

I work part-time and variable hours, and will respond to enquiries as soon as possible.

From: Ange van der Laan
Sent: Monday, October 30, 2023 12:16 PM
To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>; 'darrer' <darrer@marlborough.govt.nz> [redacted]
Cc: Jennifer James <jjames@doc.govt.nz>; Gavin Finch <gfinch@doc.govt.nz>
Subject: RE: Building on Unformed Legal Road - Upper Avon Farming Group Ltd

Hi Darren

I'm away until 10/11 but will get in touch with you after that to discuss.

In the meantime, hope you enjoy some fantastic weather.

Regards

Ange



**Herenga
ā Nuku**
AOTEAROA

Ange van der Laan

Kaitohutohu ā-Rohe I Regional Field Advisor
+64 274844677

I work part-time and variable hours, and will respond to enquiries as soon as possible.

From: Bridget McCulloch-8127 <Bridget.McCulloch@marlborough.govt.nz> On Behalf Of Tony Quirk-8077
Sent: Friday, October 27, 2023 11:20 AM
To: 'darrer' <darrer@marlborough.govt.nz> [redacted]
Cc: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>
Subject: Building on Unformed Legal Road - Upper Avon Farming Group Ltd

Attached is an aerial print which has a blue circle outlining a building that sits on unformed legal road.

RE: Access to Ferny Gair Conservation Area adjoining Upper Avon Farms Ltd

From: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Received Thursday 22 February, 2024 03:56 pm

To: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Subject: RE: Access to Ferny Gair Conservation Area adjoining Upper Avon Farms Ltd

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

No

From: Ange van der Laan

Sent: Thursday, February 22, 2024 3:56 PM

To: Tony Quirk-8077

Subject: RE: Access to Ferny Gair Conservation Area adjoining Upper Avon Farms Ltd

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Hi Tony – thank you. I take it you've had no further correspondence from section 9(2)(a) or Darren on this access?

Ngā mihi

Ange



Ange van der Laan

Kaitohutohu ā-Rohe I Regional Field Advisor

+64 274844677

I work part-time and variable hours, and will respond to enquiries as soon as possible.



From: Bridget McCulloch-8127 <Bridget.McCulloch@marlborough.govt.nz> **On Behalf Of** Tony Quirk-8077

Sent: Thursday, February 22, 2024 2:25 PM

To: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Subject: Access to Ferny Gair Conservation Area adjoining Upper Avon Farms Ltd

Ange, I refer to your email to section 9(2)(a) dated 22 February. **Attached** is the email I sent to section 9(2)(a) with the plan on 19 December.

Tony Quirk

District Secretary



Phone: 03 520 7400 | DDI: 03 520 7429

15 Seymour Street, PO Box 443

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Released under the Official Information Act

Meeting with Darren Clifford - Upper Avon Farms Ltd

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Sent: Tuesday 30 April, 2024 11:43 am

To: James Gilmour <jgilmour@doc.govt.nz>, Gavin Finch <gfinch@doc.govt.nz>, Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Subject: Meeting with Darren Clifford - Upper Avon Farms Ltd

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Kia ora koutou

FYI I received an email from Darren Clifford yesterday advising he is free for one week in June to meet to discuss access to the Ferny Gair CA. He is to advise on exact date so I'll be in touch as soon as I hear.

Tony – it would be useful for an MDC representative to also be in attendance for any discussion around ULR – can you please advise if that would be you or let me know name and contact details for other rep.

Ngā mihi mahana

Ange



Connecting people
Connecting places

Ange van der Laan

Kaitohutohu ā-Rohe I Regional Field Advisor
Herenga ā Nuku Aotearoa
Outdoor Access Commission

[+64 274844677](tel:+64274844677)
herengaanuku.govt.nz



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RE: Meeting with Darren Clifford - Upper Avon Farms Ltd

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Sent: Saturday 20 July, 2024 01:44 pm

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Subject: RE: Meeting with Darren Clifford - Upper Avon Farms Ltd

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Hi Tony

No – it turns out Darren was not available so we have agreed to touch base in Spring to set a new date.

I'll keep you posted.

Regards

Ange



Ange van der Laan

Kaitohutohu ā-Rohe I Regional Field Advisor
+64 274844677

I work part-time and variable hours, and will respond to enquiries as soon as possible.



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From: Bridget McCulloch-8127 **On Behalf Of** Tony Quirk-8077

Sent: Thursday, July 18, 2024 2:27 PM

To: Ange van der Laan

Subject: Meeting with Darren Clifford - Upper Avon Farms Ltd

I refer to the email from you back on 30 April indicating that Clifford was going to be free for one week in June – I had arranged for Jane Tito as the Council representative along with Peter Radich, but it was obviously to depend on day and timing.

June has been and gone – have there been any developments?

Thanks

Tony Quirk

District Secretary



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RE: Meeting with Darren Clifford - Upper Avon Farms Ltd - Teme Access

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Sent: Friday 22 November, 2024 04:04 pm

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Subject: RE: Meeting with Darren Clifford - Upper Avon Farms Ltd - Teme Access

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Kia ora Tony

Yes – my bad. We couldn't make it happen as I was section 9(2)(a). I've just cc'd you on an email to Darren re meeting up.

Ngā mihi

Ange



Ange van der Laan

Kaitohutohu ā-Rohe | Regional Field Advisor
+64 274844677

I work part-time and variable hours, and will respond to enquiries as soon as possible.

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From: Bridget McCulloch-8127 **On Behalf Of** Tony Quirk-8077

Sent: Friday, 22 November 2024 12:12 pm

To: Ange van der Laan

Subject: Meeting with Darren Clifford - Upper Avon Farms Ltd - Teme Access

See the last email from you of 20 July that you were going to touch base with Darren in Spring to set a new date.

Just curious whether there have been any developments?

Thanks

Tony Quirk

District Secretary



Phone: 03 520 7400 | DDI: 03 520 7429

15 Seymour Street, PO Box 443

Blenheim 7240, New Zealand

tony.quirk@marlborough.govt.nz

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FW: Access to Ferny Gair Conservation Area adjoining Upper Avon Farms property

From: Ange van der Laan <Ange.vanderLaan@herengaanuku.govt.nz>

Sent: Thursday 12 December, 2024 10:43 am

To: Tony Quirk-8077 <Tony.Quirk@marlborough.govt.nz>

Subject: FW: Access to Ferny Gair Conservation Area adjoining Upper Avon Farms property

Attachments:

Associations: 1686 Facilitate access - Teme River [1686]

Hi Tony – quick update to let you know I've still not managed to pin down Darren Clifford who is currently section 9(2)(a). I have asked him to let me know when he is available and indicated MDC interest in also meeting with him. I'll keep you posted.

Ngā mihi

Ange



Ange van der Laan

Kaitohutohu ā-Rohe I Regional Field Advisor
+64 274844677

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