

D T S Riddiford BA LLB
Export & Business Consultant

Te Awaiti Station
Martinborough RD2
Tel 06 307 8881

The Chair,
GW Natural Resources Plan

Email
dan.riddiford@paradise.net.nz

Dear Sir/Madam,

Hearing Masterton 25 5 17 at 10am -35 mins

As detailed in (1) my Submission of 23 10 15 (below) I am concerned that Council regulation be minimized so that I can freely develop Te Awaiti Station into S5 sustainable land uses. I encourage the Council to pursue a Cooperative Model of governance based on Land Management Officers (Conservators) and Soil Plans rather than a Coercive Model based on Enforcement Officers. I generally support the submission of Federated Farmers. I seek a specific reference in the Plan to *Waitakere City Council v Estates Homes Ltd* [2007] 2 NZLR 149 Supreme Court.

I wish to submit in person on specific Rules at later times.

Personal background

I farm Te Awaiti Station 6552ha of steep hill country on the Coast east of Martinborough. We farm sheep, cattle, deer and (since 2002) bees, license a Deer Hunting Business known "Te Awaiti Hunting Adventures" established in 1986 and manage the Ram Hill Forest 95ha in eucalypts for pollen for bees under AGS in 2012 I am a Founder Shareholder and Director in the Manuka PGP. I attach (2) an aerial photo of the Station showing some of our paddocks and a diverse range of microclimates and soil types. The image can be magnified by scrolling the middle wheel of a computer mouse. The obvious physical challenges of the Station have lead us to a diversified portfolio of sustainable land uses.

Problems in obtaining consents for an Aquaculture venture at Te Awaiti Station lead me in 1999 to write an LLM paper "Takings" (google "Riddiford and Takings) examining the authorities at law to respect existing property rights and compensate whenever regulation "goes too far" the test prescribed by the Privy Council in *La Sucriere* The conclusions of my paper were affirmed by the Supreme Court in *Waitakere City Council v Estate Homes Ltd SC 73/2005* para 46 et seq attached

The law

The authority at law for Property Rights and Due Process of Law is Magna Carta confirmed in the Bill of Rights 1689, the Imperial Laws Application Act 1989 and the NZ Bill of Rights 1990

- 2 Parliament is not supreme, but is subject to the Rule of Law
- 3 The RMA is not a "pure statutory regime", but is subject to property rights
- 4 Where compensation cannot be paid, onerous provisions must be "read down"
- 5 The "presumption of compensation" applies to regulatory takings

Economics

1 Modern economics grew from property rights and the Magna Carta derived Rule of Law. Due process of law and access to the Courts evolved as the means of protecting property and individual rights from the State (the King)

2 The Philosopher John Locke eg *Civil Government* opposed the novel taxes and demands of James II by affirming the rights of the Sovereign Individual and his property rights. From that premise he insisted that the State should seek the free consent of as many of the governed as possible, if necessary by payment of compensation funded by “common taxation”

3 John Locke described the concepts of public and private property, cost benefit analysis and user pays, the foundations assumed a century later by Adam Smith in describing a market economy.

4 These concepts are the basis of Public Choice Theory (the application of economic principles to modern legal problems) underpinning RMA S32 evaluations.

5 Free consent from everyone becomes impossible unless all ratepayers are treated the same ie rateably equal (equal after allowing for differing circumstances). The inevitable logic is that the Courts eg *Electrocorp v M'Kenzie* CA have declared that Councils owe a fiduciary duty (akin to Trustee to Beneficiary) to their ratepayers.

Clash of political cultures at the expense of farmers and good land management

Where has the free consent of Farmers gone ?

Ratepayer money is wasted when Councils ignore the law

I enclose below (4) my email train up to 13 10 15 and (5) the so called Advice letter from Ms Smith. This is written in a coercive Soviet style (the word “Soviet” in Russian means committee) without the least apology for a lawless attempt at entry without a prior appointment and ignoring my absence from Te Awaiti Station and staff busy docking. Ms Smith the Council’s attack lawyer does not have the grace to discuss *Baigent’s* case. I would appreciate learning under the LGOI Act how much chargeable time was spent on attempting illegal entry and the total chargeable cost measured in dollars. My experience demonstrates why in practice it is important that Ms Smith and other similarly minded GW Officers should have no influence over the development of TeAwaiti Station

Sadly I must say that the Council ignores legal advice and Official Information requests when they do not align with the prevailing political culture. I believe that transparent and prompt responses to Official Information requests would result in democracy as a continuing process during the Council term as distinct from democracy in appearance only limited to triennial elections.

I have highlighted in blue on emails (4) and (5) at the end of this submission my requests under the LGOI Act for a copy of the Simpson Grierson opinion on Bill of Rights 1990 confirming there must be reasonableness when entering private land. To date GW have not attempted to locate the opinion or forward it to me.

Similarly a request for all policy documents mentioning *Waitakere v Estate Homes* in the possession of Council when preparing this plan has been ignored. May I please repeat that request under the LGOI Act.

I would contrast these deplorable lapses from democratic behavior with the excellent service and advice I have received from Mr David Cameron in the past and Mr Andrew Turnbull as the current Land Management Officer

DTS Riddiford 21 5 17

1 MY FIRST SUBMISSION OF 23 10 15 ON THE GW PLAN

D T S Riddiford

The Manager Att Mr Nigel Corry
GW

23 10 15 **GW Regional Plan – Submission**
dan.riddiford@paradise.net.nz

50 Garden Road
Northland
Wellington
Tel & Fax 64 04 4759687
Email

Dear Sir/Madam,

I farm Te Awaiti Station 6552 ha of steep hill country on the Coast east of Martinborough.

Please treat this as a summary submission on which I wish to be heard and or later base an appeal to the Environment Court. This afternoon you declined my request for an extension until Monday 26 10 15 at 5pm. However you agreed that my request might be reconsidered by others in the Council. The reason for my request is that GW appears always to call for submissions in Spring when Farmers are seasonally busy. In my case at Te Awaiti Station our drought strategy to prepare for the threatened El Nino includes radical destocking to core breeding stock and advanced shearing and weaning. This requires long hours of work. These pressures compound my seasonal workload as a commercial beekeeper.

For Te Awaiti Station s5 sustainable land use and the progressive change to Manuka and other native vegetation better suited to bees demand that I minimize regulatory distraction.

GW and the Plan ignore Government Policy to revegetate for carbon under AGS policies.

Issues for this and future submissions include :

- 1 All matters raised by Federated Farmers, landowner and other submitters
- 2 Specific recognition of property rights in the plan to acknowledge and give effect to the decision of the Supreme Court in *Waitakere v Estate Homes*
- 3 All issues raised in my LLM paper Takings and in particular the conflict between the established Common Law reflecting Magna Carta and current practices of Greater Wellington.
- 4 An example is the present practice of Council Enforcement Officers to effectively roam at will on private land ignoring the established law of search and seizure as described by the Court of Appeal in *Baigent's* case requiring reasonableness. Reasonableness includes fixed appointment times with adequate advance notice and a genuine consideration of the needs of particular landowners. Reasonableness also requires a balanced consideration of the merits of anonymous information. Reasonableness is essential to achieve government by free consent rather than coercion
- 5 To achieve the purposes of the RMA and Regional Plan Greater Wellington should promote cooperative methods ahead of coercive methods. Soil conservators only please.

General objection to all earthwork and vegetation removal controls and rules including

- 5 P22 Definition of Earthworks
- 6 P151/152 5.4.3 (d) and (e) are unenforceable takings to the extent that the cost of fencing is not compensated
- 7 P153 5.4.4 should provide for permitted earthworks over two hectares
- 8 Rule 100 opposing Vegetation Clearance is ultra vires unless compensation is paid
The limit of 2 hectares is targeted taking and discriminatory for Te Awaiti Station of 6552ha

Yours faithfully DTS Riddiford

4 MY EMAIL OF 13 10 15 TO GW OBJECTING TO ILLEGAL ENTRY

Mr Nigel Corry, Ms Susan Smith GW
Good Afternoon,

13 1015 GWGW

This afternoon it has been raining forcing me inside to work on paperwork. On receiving Ms Smith's email below I phoned to speak to Mr Corry, but on finding that he was unavailable spoke to Ms Smith. She questioned me as to when she could visit. I explained that under the common law of "search and seizure" reasonableness was more than timing, but of reasonable circumstances. I explained that the Council's policy guidelines judging from the OI Act response emailed on 12 October were incorrect in not describing reasonableness in the sense not only of timing, but of circumstances as described in part in the Court of Appeal decision in *Baigent's* case.

I stated that I would immediately state my position by email so it was not misunderstood or misreported. I do not oppose Council visits at the right times and in the right circumstances.

However I say that the complaint as reported is not credible on its face and should have been discounted, without penalising the time of the Landowner and staff at a busy time of the livestock and beekeeping season :

Greater Wellington Regional Council received a notification to the Environmental Hotline (0800 496 734) on 21 September 2015 at 1005 hours; Jesse Tearle recorded the following:

Caller reported concern that the owners of Te Awaiti Station have bulldozed approx. 50km of new track. The caller was unsure if this track went through water but it seems likely given the length. Looked on file and could not find consent for the work. The caller would not leave details but said a number of people in the area are concerned.

I say it is significant that :

- 1 The caller chose to be anonymous so that their report could not support enforcement action
- 2 Te Awaiti is a large property of 6552 ha requiring over 100km of roads and tracks if it is to be farmed effectively
Unlike other farms we do not have the benefit of public roads
- 3 Since the two boundaries are the Oterei and Rerewhakaitu Streams the water from the centre of the Station is carried in ephemeral streams on rock bases unlikely to be damaged by road or track maintenance
- 4 Beekeepers require safe roads
- 5 The motivation of the anonymous caller is suspect
- 6 Te Awaiti frequently is the object of anonymous complaints

I would be grateful if the Council could ask Simpson Gierson for a copy of its opinion on reasonableness when entering private land if it cannot otherwise be located.

This would address my concerns that the Council buries legal opinions not to its liking.

I am concerned that the Council should have wasted the time of two officers in travelling to Te Awaiti this morning only to find the gates padlocked. This is an example of the need for Councils to work with Landowners. The gates at Te Awaiti are routinely padlocked for security when staff are away and also at critical mustering times to avoid mobs becoming boxed.

I would have explained that the gates were likely to be padlocked if the Officers had stated that they intended ignoring my statement that Tuesday 12 10 15 was not a convenient or sensible day for them to visit

Yours faithfully

DTS Riddiford

On 13/10/2015 1:55 p.m., Susan Smith wrote:

Good afternoon

I am writing to you to provide an update on the GWRC investigation as you have been copied into an email by Mr Riddiford. They were unable to make contact with Mr Riddiford whilst on site.

Trudy Richards and Ed Lee attended Te Awaiti Station today to carry out an inspection and assess compliance with the Resource Management Act 1991 (RMA) in accordance with section 332 powers. The gates were locked and they were only able to gain access on foot which has significantly limited the area they were able to cover. They will now use the information obtained to determine compliance with the RMA and progress GWRC's investigation into this notification.

Kind regards

Susan

Susan Smith | Team Leader, Environmental Protection
GREATER WELLINGTON REGIONAL COUNCIL | Shed 39, 2 Fryatt Quay, Pipitea, Wellington
6011 |
Te Pane Matua Taiao
PO Box 11646, Manners St, Wellington 6142
T: 04 830 4022 | M: 027 212 0391
www.gw.govt.nz

From: Dan Riddiford [<mailto:dan.riddiford@paradise.net.nz>]

Sent: Monday, 12 October 2015 10:05 p.m.

To: Edward Lee

Cc: Susan Smith; Chris Laidlaw - Chair; jamie.falloon@xtra.co.nz; Elizabeth McGruddy; Nigel Corry

Subject: Re: Compliance site visit reply

Good Evening Edward and
Trudy,

12 10 15

You do not have my consent as Landowner to enter Te Awaiti Station. To avoid the possibility of your unlawful trespass please consider that all powers under the RMA including s332 are subject to the NZ Bill of Rights Act 1990 and the common law obligation that all powers of "search and seizure" be exercised reasonably and for the clear public good. (See *Baigent* CA discussed in my LLM paper Takings attached)

I suggest that your approach is unreasonable in that :

- 1 Trudy Richards as the Senior Officer has apparently made no effort to speak to me in person
- 2 Your email read only the evening before (since I have been working outside on bees is unreasonably short notice)
- 3 I personally am seasonally busy on bees while the Station staff are docking. Your visit would be an unreasonable wasting of everyones time.
- 4 You have chosen the worst day of weather to visit this week and risk damaging our tracks The latest weather forecast but confined only to tomorrow is Met Service :
Becoming cloudy in the morning and rain developing in the afternoon, briefly heavy, then clearing by evening with fine spells increasing. Northwesterlies, gale in exposed places gusting 100 km/h, changing strong southerly in the afternoon, then easing. Issued: 4:59pm
There is the risk of a sudden southerly dump of rain rendering the tracks dangerously greasy and prone to rutting
- 5 Under the Health and Safety at Work Act 2015 the Landowner must consider all risks to invitees including bad weather and the risk of your becoming lost on unfamiliar ground.
- 6 You appear not to have exercised your discretion to ignore the anonymous complaint if in fact it exists
- 7 You appear not to have considered the possibility that all legitimate information may equally well be gathered by aerial surveillance

I strongly believe that Council Officers are subject to the Rule of Law and should in general only enter private land on reasonable notice and by mutually arranged appointment times.

Would you please urgently under the LGOI email to me all documents relating to your determination to enter Te Awaiti Station including the anonymous complaint and state the actual risks to the environment posed by tracking at Te Awaiti.

I have copied my reply to your Chairman and Mr Corry as Senior Enforcement Officer

Yours faithfully

DTS Riddiford

On 12/10/2015 11:50 a.m., Edward Lee wrote:

Dear Mr Riddiford

I am writing to advise you that Trudy Richards (Senior Enforcement Investigator) and myself will be visiting Te Awaiti Station on Tuesday 13 October 2015. Our visit will be undertaken in order to assess if any works or activities undertaken at your property are authorised under the Resource Management Act 1991 (RMA) and our Regional Plans. Trudy and myself are warranted enforcement officers under section 38 of the RMA and will be entering the site under the powers given by section 332 of the RMA.

As discussed with you previously if you would like to accompany us on site please let me know.

Yours Sincerely

Edward Lee | Environmental Protection Officer
GREATER WELLINGTON REGIONAL COUNCIL
Te Pane Matua Taiao
34 Chapel Street | PO Box 41, Masterton
5840
T: 06 8261548 | M: 027 4379323 |
www.gw.govt.nz

5 MY EMAIL OF 5 10 15 TO GW CHAIR OBJECTING TO ILLEGAL ACCESS

The Chairman, GW
Laidlaw

Att Mr Chris
5 10 15

Dear Sir,

As you may know I farm at Te Awaiti Station 6552 ha on the Wairarapa Coast east of Martinborough. Despite paying significant rates to the Regional and District Councils we are serviced only by 52km of partly metalled road from Martinborough. At private expense like many other farmers we must make our own roads. I believe we should not be unreasonably constrained by Local Government Councils in our endeavours all leading to sustainable land use (s5 RMA)

In the evening of 29 9 15 I was telephoned by "Edward", explaining that he was an Environment Officer for GW and that he had received an anonymous complaint that we had made 50 km of tracks on Te Awaiti Station and insisted that he should visit to inspect the next day. Eventually he gave his surname as Lee. I suggest that in the nature of their job and in the interests of Officer accountability Enforcement Officers should always state upfront their surnames (and warrant numbers).

I declined consent for him to enter Te Awaiti Station on the basis that his actions were unreasonable in terms of Magna Carta, English Common Law and the Bill of Rights 1990 all of which constitutionally prevail over the presumed powers of entry in the RMA. The Court of Appeal decision in *Baigent's case* discussed in my attached LLM papers *Takings* is relevant. RMA powers of "search and seizure" are legally limited by the duty to act "reasonably". I explained to Edward that Tuesday and Wednesday were fully occupied by a visit by Murray Redpath Forestry Adviser for a proposed AGS forest.

My reasons for declining consent for GW to enter (apart from the Officer Edward's failure to initially fully identify himself) were :

1 Reasonableness requires an appointment time to be made with adequate notice (except perhaps where there is real reason to suspect an RMA offence is being committed)

2 The complaint was anonymous (so that my word as a Landowner with five generations of family work invested in Te Awaiti Station since 1843 was to be treated as no more reliable than an anonymous person too timid to provide their surname. I am concerned that Edward lacked the local knowledge to know that the anonymous complaint was unlikely to have legal substance or should not be pursued.

3 Edward and colleagues had not bothered to question the complainant or later consider when the roads were made or how if at all they might infringe the GW Plan or the RMA. In other words Edward and colleagues are either poorly trained or genuinely wish to believe that Parliament has delegated unlimited powers.

4 I was further perturbed when Edward to explain himself stated that he was only interested in stream diversions or waterbody crossings. Why the belated explanation? I confirm my statement in the evening that in the past 12 months we had made no stream diversions.

5 Edward's request given the size of Te Awaiti Station, the non erodibility nature of the hill country with rock underlying all steep faces and limited water bodies all flowing to sea without land neighbours to suffer effects amounted to an unreasonable attempt to waste my time as Landowner and rates as ratepayer (c\$18,000 pa)

In retrospect I doubt whether an anonymous complaint was even made, but I surmise that

Edward thought that Te Awaiti Station might be an interesting place to visit all at the general expense of ratepayers and private expense of my time.

To address these concerns I would be grateful if you would with urgency under the LGOI Act :

1 Send me a copy of the so called anonymous complaint and state who received it and when it was received and all surrounding circumstances

2 Provide copies of all documents held by the Council generally reminding GW staff that there are legal limits on their powers to enter private land I believe there is a Simpson Grierson Legal Opinion costing \$8000 in the 1990's advising the Council of these limits.

I request urgency by 12 10 15 so that I have adequate time to prepare a submission on the GW Plan for I have an extension until 23 October.

I would assume that if I do not receive a reply by 12 October GW intend extending a further pro rata extension of my submission time

I have copied my letter to Federated Farmers and Mr Scott as the Constituency MP to alert them to this apparent waste of ratepayers money and resources arising from an "unreasonable" exercise of powers of entry on private land.

Yours faithfully

DTS Riddiford

5 GW CONCLUSION OF INVESTIGATION : SMITH LETTER OF 21 10 15

File No: SN/08/109/04
21 October 2015

Shed 39, 2 Fryatt Quay
Pipitea, Wellington 6011
PO Box 11646
Manners Street
Wellington 6142
T 04 384 5708
F 04 385 6960
www.gw.govt.nz

Mr Daniel Riddiford
C/O Te Awaiti Station
Tora
South Wairarapa
dan.riddiford@paradise.net.nz

Attn: Daniel Riddiford, Station Manager

Dear Dan

Conclusion of investigation into alleged roading and tracking works at Te Awaiti Station

Thank you for your correspondence in relation to the notification to Greater Wellington Regional Council (GWRC) about 50 kilometres of roading and tracking works at Te Awaiti Station. This letter concludes the GWRC's investigation into the notification. You have received this letter because you are in charge of operations at Te Awaiti Station.

On this occasion we have decided not to pursue this matter further because:

You have assured me that no roading and tracking works or streamworks have taken place in contravention of the Resource Management Act 1991 and the Regional Plans.

Ed Lee and Trudy Richards, Enforcement Officers, were advised by Mark Jonas, Manager on 13 October 2015 that no tracking had taken place during the 6 months he has been working at Te Awaiti Station.

On 13 October 2015 Ed and Trudy did not observe any works from the gates of the station. The notification was made anonymously, therefore further details of the alleged works could not be obtained.

Procedures when notifications are received

GWRC has undertaken to investigate all notifications to our environmental hotline number to determine compliance with the Resource Management Act 1991 (RMA). Notifications indicating that environmental harm is occurring are usually followed up with an immediate and often unannounced site visit. The purpose of the prompt response is to prevent or limit effects on the environment. Notifications of historical works may be followed up days later depending on workloads

As the notification about Te Awaiti Station was anonymous, Ed contacted you as the Station Manager to obtain your input and assistance to deal with these allegations. Experience has shown that notifications of this type can be dealt with quickly and efficiently by assessing any works that have taken place during a site visit by a GWRC officer who is impartial and objective. The purpose of an inspection is to assess compliance with the RMA and Regional Plans. Enforcement officers are warranted (section 38) and enter the site under the powers given by section 332, RMA.

Advice

I have read your emails of 12 October 2015 and 13 October 2015 and note your view and objections to officers entering your site. I am of the opinion that entry onto your site during normal work hours by Ed and Trudy on 13 October 2015 was reasonable. As stated above GWRC is not pursuing this matter further at this time, although I would like to draw your attention to section 338 of the RMA which states:

Every person commits an offence against the Act who wilfully obstructs, hinders, resists, or deceives any person in the execution of any powers conferred on that person under this Act (RMA)

If any further information on this matter comes to our attention we will reconsider this position and if we think it is appropriate, inspect Te Awaiti Station to determine compliance with the RMA Section 332 gives enforcement officers powers to inspect any place or structure to assess compliance with the RMA and Regional Plans, at all reasonable times. Please be aware that GWRC has a responsibility to enforce the RMA. Failure to comply with the MA may result in enforcement action including formal warnings, infringement notices or prosecution. More information on potential penalties is available online at <http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM239042.html> and <http://www.legislation.govt.nz/regulation/public/1999/0359/latest/whole.html#DLM300060>

[GWRC is not seeking a copy of the letter that you refer to in your 13 October 2015 email from Simpson Grierson. Please feel free to follow this up with them directly](#)

If you have any questions about this matter please call me on 04 830 4022.

Yours sincerely

Susan Smith

Team Leader, Environmental Protection For Manager, Environmental Regulation

