

**BEFORE THE ENVIRONMENT COURT
AT WELLINGTON.**

Env-2019-WGN-

IN THE MATTER

of the Resource Management Act
1991 (“Act”)

AND

IN THE MATTER

of an appeal pursuant to clause
14(1) of the First Schedule of the
Act in relation to the Proposed
Natural Resources Plan for the
Wellington Region

BETWEEN

**DANIEL THOMAS SPENCER
RIDDIFORD**

Appellant

AND

**WELLINGTON REGIONAL
COUNCIL**

Respondent

NOTICE OF APPEAL

Mr DTS Riddiford,
Te Awaiti Station,
Martinborough RD2
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Service should be both hardcopy (because of limited internet) and
Email (since rural mail can take 5-6 days to arrive)

**FORM 7 NOTICE OF APPEAL TO ENVIRONMENT COURT
AGAINST DECISIONS ON THE PROPOSED NATURAL
RESOURCES PLAN FOR THE WELLINGTON REGION**

To: The Registrar

Environment Court

Wellington

1. Daniel Thomas Spencer Riddiford generally agree with and now formally apply to be a s274 party to the appeals filed by Beef and Lamb NZ and Federated Farmers of New Zealand.
2. Daniel Thomas Spencer Riddiford appeals against a decision of the Wellington Regional Council (WRC) on the following proposed plan:

Proposed Natural Resources Plan for the Wellington Region

3. The Appellant made a submission and spoke to that submission in person at hearings before Wellington Regional Council Hearing Commissioners in respect of the proposed plan.
4. The Appellant is not a trade competitor for the purposes of Section 308D of the Resource Management Act 1991 (Act).
5. The Appellant received notice of the decision referred to in this appeal on or after 31 July 2019 by rural mail.
6. The decision was made by the Respondent.

7 The Appellant is willing to participate in mediation.

8 The parts of the decision that the Appellant is appealing are:

.a The role of property rights *Waitakere v Estate Homes* [2007] SC

.b Rural Landuse Provisions (including definitions) relating to livestock access to waterbodies, farm earthworks, and vegetation clearance

.c Provisions relating to the claimed significance of the Oterei River and its management

Reasons for appeal

9 The Appellants reasons for appeal are generally that:

a Carbon sequestering forest In respect of Earthworks and Vegetation the Rules obstruct the planting of carbon sequestering forest, Government Policy under the Climate Change Act 2008 and the proposed Zero Carbon Bill.

b Subsidiarity is the concept derived from John Locke and earlier philosophers that all decision making should be devolved to the minimum competent units in society. It is the foundation of our legal system derived from Magna Carta and the foundation of modern economic thinking. For example the Farmer is obviously the best person by virtue of local knowledge to know when a paddock of pasture should be maintenance scrub cut to sustain or improve the pasture or converted to forest.

c Delegation *delegatus non potest delegare* The Councillors had no power to delegate their power to create subordinate regulation without knowing and approving the full detail of the final plan after it was passed by the Officers Or considering the Rules of Natural Justice in respect of affected Ratepayer Farmers. Excessive delegation to the Officers is anti democratic and avoids the accountability of elected Councillors to their ratepayers.

d Waitakere City Council v Estate Homes Limited [2007]2NZLR 149

Supreme Court The Respondent has no power to pass broad Rules which effect a non compensated regulatory taking of any of the property rights in land of ratepayers.

[45] New Zealand law provides no general statutory protection for property rights equivalent to that given by the eminent domain doctrine under the Fifth Amendment to the United States Constitution, under which taking of property without compensation is unconstitutional and prohibited. The New Zealand Bill of Rights Act 1990 does not protect interests in property from expropriation. The principal general measure of constitutional protection is under the Magna Carta which requires that no one “shall be dispossessed of his freehold ... but by ... the law of the land”.²⁰ One of the effects of this measure is to require that the power to expropriate is conferred by statute, and the statutory practice is to confer entitlements to fair compensation where the legislature considers land is being taken for public purposes under a statutory power. Furthermore, as Professor Taggart has pointed out, the courts have been astute to construe statutes expropriating private property to ensure fair compensation is paid.²

10 The Appellants further reasons for appeal include as noted by FFNZ that:

- a. Decision Report 3 (para 3.32) notes expert evidence from Council that there is no compelling evidence of wholesale degradation of freshwater quality through the region. The evidence from Council¹ further shows that “there is a high level of confidence that a majority of sites have improving trends over the past decade for most variables (and) there is strong evidence of overall water quality improvement at the regional level over the past decade”. Acknowledging this context, FFNZ seeks less onerous rules for certain activities.
- b. Decision Report 1 (para 5.12) acknowledges the importance of farming activities to both the regional and national economy and an intent to simplify the rules applying to farming practices.

11 Without limiting the generality of the above, the specific reasons for the appeal and the relief sought with respect to each provision are set out in the table attached at Schedule 1 and in the Appellant’s submissions.

12 The Appellant also seeks the following further relief (in addition to the matters set out above and in Schedule 1):

- a. other relief to give effect to the concerns raised in this appeal and the Appellants submissions

- b. any consequential amendment as to detail or substance throughout the Plan to give effect to these appeal points; and
- c. costs

13 The Appellant attaches the following documents to this notice by way of a covering letter :

- a. copy of his submissions
- b. a list of names and addresses of persons to be served with a copy of this notice.

Daniel Thomas Spencer Riddiford

18 September 2019

Address for service of appellant:

Mr DTS Riddiford,
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Martinborough RD2
Tel 06 307 8850

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision (*or* part of the decision) appealed. These documents may be obtained, on request, from the appellant.

The copy of this notice served on you does not attach a copy of any other documents necessary for the adequate understanding of the appeal (of which there were none), or a list of names and addresses of persons to be served with a copy of this notice. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington or Christchurch.

SCHEDULE 1

Interpretation 2-1 How to use this Plan p14

Add new second paragraph starting as line 4

The provisions of this plan must be interpreted along with existing statutes and caselaw. In Waitakere City Council v Estate Homes [2007] 2 NZLR a Resource Management decision, the Supreme Court reminded New Zealand of Chapter 13 of Magna Carta 1225 which requires that “no one shall be dispossessed...but by....the law of the land”

Reasons :

- 1 As stated at para 1 of my Submission dated 25 5 17 “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 seek a specific reference in the Plan to *Waitakere City Council v Estate Homes Ltd* [2007] 2 NZLR 149 Supreme Court.” The philosophy of Magna Carta, Bill of Rights 1689 and John Locke on which modern economics is based is a philosophy of cooperation between the State and the Individual based on mutual respect.

Definition “Earthworks” p23 Decisions Version – Part 1

Add as not included (d)(vii) *Roads on farms greater than 20ha*

Add as not included (d)(vii) *Dams for livestock water on farms greater than 20ha*

Reasons :

The PRNP already adopts 20 hectares as the threshold for other Rules such as for permitted on farm rubbish dumps.

Definition of vegetation clearance p38 Decisions Version Part 1 Add

Vegetation clearance does not include.....

(.c) any vegetation clearance removing or killing transitional scrub species gorse, manuka, kanuka and tauhinu

Rule 97 Rule 98 Livestock Access to water Amend to *This Rule shall not apply to Coastal land adjoining the Coastal Marine area or where surface water bodies flow directly into the sea or to sheep grazing*

Reasons :

- 1 There are no significant adverse effects on water from sheep or cattle on extensive land.
- 2 The cost of fencing along the Coast and each water body would be disproportionately expensive and amount to a compensatable substantial deprivation of property rights (80km @\$20,000 per km = \$1-6m) and trigger the presumption of compensation for a substantial deprivation of a property right..

- 3 Sheep only approach water to drink
- 4 Existing stock crossing points are wider than 20m because of the habits of Station livestock.
- 5 Rule 97(d) (v) in limiting livestock to cross water crossings twice a month are impracticable, because livestock grazing rotations require the shifting of livestock every three days. Three day rotations are required because of the growth habits of ryegrass and clover to recover quickly, by drawing on 3 day root reserves.

Rule 99 Earthworks Amend to *On properties larger than 20 ha for the purpose of forestry or farming earthworks up to 5000m² per contiguous area shall be a permitted use , provided the following conditions are met:*

- (i) *soil or debris from **earthworks** is not placed where it can enter a surface waterbody or the coastal marine area, and*
- (ii) ***earthworks** will not create or contribute to instability or subsidence of a slope or another land surface at or beyond the boundary of the **property** where the **earthworks** occurs, and*
- (b) *work areas are stabilised within six months after the completion of the **earthworks**.*
- (c) *any **earthworks** shall not, after the **zone of reasonable mixing**,—Result in any of the following effects in receiving waters*
 - (i) *the production of conspicuous oil or grease films, scums of foams, or floatable or suspended materials, or*
 - (ii) *any conspicuous change in colour or visual clarity, or*
 - (iii) *any emission of objectionable odour, or*
 - (iv) *the rendering of fresh water unsuitable for consumption by animals, or*
 - (v) *any significant effect on aquatic life and*
- (.e) *earthworks shall not occur within 1m of a surface body except for activities permitted under Rule 114 and 115*

Reasons:

1 Roadworks are a fact of life on hill country and when cut into the rock lying close to the surface at Te Awaiti Station require little maintenance

2 At Te Awaiti Station the Ring Road passes 1m above the Oterei River at “Lambton Quay” due to the unavoidable geology. Compliance with a 5m separation distance would require an unwise excavation of the toe of the hill slope likely to cause a slip.

Rule 100 Vegetation clearance on erosion prone land

On properties larger than 20 ha for the purpose of forestry or farming vegetation clearance and the associated discharge of sediment into water

or onto land on **erosion prone land** is a permitted activity, provided the following conditions are met:

- (a) any soil or debris from the **vegetation clearance** is not placed where it can enter a surface water body or the coastal marine area, and
- (b) any soil disturbances associated with the **vegetation clearance** shall not alter the **zone of reasonable mixing**, Result in any of the following effects in receiving waters
 - (i) the production of conspicuous oil or grease films, scums of foams, or floatable or suspended materials, or
 - (ii) any conspicuous change in colour or visual clarity, or
 - (iii) any emission of objectionable odour
 - (iv) the rendering of fresh water unsuitable for consumption by animals
 - (v) Any significant effect on aquatic life
- (c) Vegetation clearance shall not occur within 5m of a surface water body except at water crossings and culverts

Reasons :

- 1 Scrub removal especially of gorse on a regular cycle is essential to maintain good quality grass on hill country
- 2 The Court of Appeal decision in *Mackenzie District Council v Electricorp* [1992] 3. NZLR 41 shows that the fiduciary principle applies to the relationship between Councils and landowning ratepayers, who must be treated rateably equal. The fiduciary principle of rateable equality is breached if a large landowner is treated as identically the same as a smaller landowner and limited to clearing only 2 ha of vegetation per property in any year

Rule 101 Earthworks and vegetation clearance –controlled activity

The use of land, and the associated discharge of sediment into water or onto or into land where it may enter water from earthworks not permitted by Rule 99 or vegetation clearance on erosion prone land that is not permitted by Rule R100 is a controlled activity with a maximum charge in Council fees of \$300

Reasons :

- 1 A power to regulate is not a power to confiscate [Privy Council]
- 2 Fees over \$50,000 as occurred in *Bayley's case* 20 years ago where the Environment Court followed a Rule in the Gisborne District and declined permission to clear a paddock of kanuka create an atmosphere of non cooperation between Councils and Farmers

Oterei River References to the Decisions Version Part 2
Pages 448, 456, 481, 556, 563 should be deleted in the absence of specific evidence of claimed values.

Definitions *Natural Wetland* and *Significant Natural Wetland* shall not include the mouth or bed of the Oterei River

Reasons:

1 The closeness of the hills at Te Awaiti Stationhead limits the number of holding paddocks. This is made worse by the difficulty in having fences terminate to sea. The area at the mouth of the Oterei River has always been grazed by Station livestock and horses and remains part of the Crown Grant title of my Great Grandfather EJ Riddiford. Over 10 years ago the SWDC approved our rebuilding a cattlestop on the public road to retain these animals close to the Stationhead.

3 All native trees on both sides of the river mouth have been privately planted