

# MINUTES

**TITLE:** Environment and Planning Subcommittee  
**DATE:** Friday, 20 April 2012  
**TIME:** 10.30 am  
**VENUE:** Tasman Council Chamber, 189 Queen Street, Richmond

**PRESENT:** Cr S G Bryant (Chair), Crs B W Ensor and Z S Mirfin

**IN ATTENDANCE:** Wolfram Gessler - Applicant  
Consent Planner, TDC (P Webby)  
Victoria Hall, Solicitor - McFadden McMeeken Phillips  
Jane Hilson, Planscapes (NZ) Ltd - Consultant Planner  
Principal Resource Consents Advisor, TDC (J Butler)  
Mr Ed Stevens - Submitter  
Administration Officer, TDC (G Woodgate)

**APPLICANTS:** Wolfram and Johanna Gessler

**1. W AND J GESSLER, 1469 MOTUEKA VALLEY ROAD, NGATIMOTI - APPLICATION No. RM120045, RM041406V1**

The application seeks the following:

To subdivide a 30.6983 hectare property into two allotments as follows:

- (a) Proposed Lot 1 having an area of 23 hectares and containing the existing dwelling.

The applicants have volunteered restrictive covenants over following areas on Lot 1:

- A and B no buildings;
- C and D no dwellings but allows for farm buildings;
- D no planting of new trees.

An existing QEII covenant area will be unchanged.

- (b) Proposed Lot 2 having an area of 6.7 hectares and containing the established vineyard, cafe infrastructure and buildings. The cafe building is the nominated dwelling site for this allotment.

The Committee proceeded to hear the application, presentation of submissions and staff reports as detailed in the following report and decision.

The Committee reserved its decision.

## RESOLUTION TO EXCLUDE THE PUBLIC

Moved Crs Bryant / Ensor  
EP12-04-01

THAT the public be excluded from the following parts of the proceedings of this meeting, namely:

W and J Gessler

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to the matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for passing this resolution are as follows:

| General subject of each matter to be considered | Reason for passing this resolution in relation to each matter | Ground(s) under Section 48(1) for the passing of this resolution                       |
|---|---|--|
| W and J Gessler                                 | Consideration of a planning application                       | A right of appeal lies to the Environment Court against the final decision of Council. |

**CARRIED**

Moved Crs Mirfin / Ensor  
EP12-04-03

THAT the open meeting be resumed and the business transacted during the time the public was excluded be adopted.

**CARRIED**

2. W AND J GESSLER, 1469 MOTUEKA VALLEY ROAD, NGATIMOTI - APPLICATION No. RM120045, RM041406V1

Moved Crs Bryant / Ensor  
EP12-04-02

THAT pursuant to Section 104B of the Resource Management Act, the Committee GRANTS consent to W and J Gessler as detailed in the following report and decision.

**CARRIED**

# TASMAN DISTRICT COUNCIL

## Report and Decision of the Tasman District Council through its Hearings Committee

Meeting held in the Tasman Room, Richmond on 20 April 2012

Site visit undertaken on 19 April 2012

Hearing closed on 20 April 2012

A Hearings Committee (“the Committee”) of the Tasman District Council (“the Council”) was convened to hear the application lodged by **W and J Gessler** (“the Applicant”), to subdivide land at Ngatimoti, and to vary an existing consent to allow the subdivision. The application, made in accordance with the Resource Management Act 1991 (“the Act”), was lodged with the Council and referenced as RM120045 (subdivision) and RM041406V1 (variation to existing consent).

|                           |  |
|---------------------------|--|
| <b>HEARING COMMITTEE:</b> | Cr Stuart Bryant, Chairperson<br>Cr Zane Mirfin<br>Cr Brian Ensor  |
| <b>APPLICANT:</b>         | Ms Victoria Hall (Counsel)<br>Mr Wolfram Gessler (Applicant)<br>Ms Jane Hilson (Consultant Planner)                            |
| <b>CONSENT AUTHORITY:</b> | <b>Tasman District Council</b><br>Ms Pauline Webby (Subdivision Planner)   |
| <b>SUBMITTERS:</b>        | Mr Ed Stevens  |
| <b>IN ATTENDANCE:</b>     | Mr Jeremy Butler (Principal Resource Consents Adviser) -<br>Assisting the Committee<br>Mr Garry Woodgate (Committee Secretary) |

## 1. SUMMARY

The Committee has **GRANTED** a resource consent, subject to conditions, to subdivide land to create Lot 1 of 23 hectares containing an existing dwelling, Lot 2 of 6.7 hectares containing an existing café, and Lot 3 of 0.3 hectares.

## 2. DESCRIPTION OF THE PROPOSED ACTIVITY

The application seeks to subdivide a 30.7 hectare property into two allotments; one having an area of 23 hectares with the existing dwelling (proposed Lot 1), the second having an area of 7 hectares and containing the existing vineyard/ cafe and productive land (proposed Lot 2). Proposed Lot 3 is a very small lot that will, if consent is granted, be held together with proposed Lot 2.

The property has two distinct parts: the productive land area that is predominantly planted in an existing vineyard with a balance of hillside with very low productive capacity. This area also encompasses the indigenous vegetation under the protection of a QEII Trust open space covenant, and a large area of extremely steep

hillside currently with a mature pine tree crop. The balance of this land is in poor pasture and weed species.

Power lines cross the hillside to the south of the open space covenant area and these are accessed via this property to allow for maintenance and vegetation clearance of the area beneath the power lines. Nothing in this application will change this existing situation.

In conjunction with this subdivision proposal, a Section 127 application has been made to cancel Condition 9 of RM041406. The functional clauses of Condition 9 limit the use of (what is now) the café building to wine tasting and a café (9.1.1), require non-residential use of the café building in the event that that business is discontinued (9.1.2), and prevents subdivision of the property for twenty years (9.1.3).

### 3. TASMAN RESOURCE MANAGEMENT PLAN (“TRMP”) ZONING, AREAS AND RULE(S) AFFECTED

Zoning: Rural 2  
Areas: Land disturbance 2

| Activity                                | Relevant Permitted Rule | Applicable Rule | Status                   |
|---|-------------------------|-----------------|--------------------------|
| Subdivision in Rural 2 zone             | Nil                     | 16.3.5.2        | Discretionary            |
| Change to Condition 9 of RM041406       | Nil                     | S127 of the RMA | Discretionary            |
| Right-of-way length exceeding 200metres | 16.2.2.1                | 16.2.2.6        | Restricted Discretionary |

Overall the proposal is a Discretionary Activity.

### 4. NOTIFICATION AND SUBMISSIONS RECEIVED

#### Written Approvals

Prior to notification written approvals were received from:

- H and D J Taylor, 1481 Motueka Valley Road
- N Brown and P Shortley, 1453 Motueka Valley Road
- MALJ and CMJ Creighton, 1449 Motueka Valley Road
- E R Dowden, Motueka Valley Road ,1475 Motueka Valley Road

Pursuant to Section 104(3)(a)(ii) of the Act we must not have any regard to any effect on these parties.

#### Notification

The application was publicly notified and submissions closed on 30 March 2012.

## Submissions

Submissions in opposition:

| Submitter         | Reasons   |
|-------------------|---|
| A L Brereton      | Opposed in general to land fragmentation with multiple reasons given  |
| I J and J M Thorn | Issues with access and volunteered covenants  |
| A Bensemman       | Future problems with shared accessway given proximity to sheds café and residence.<br>Condition 9 should not be deleted, precedent if condition is overturned |
| E B Stevens       | Opposed in general to land fragmentation with multiple reasons given.   |

### 5. PROCEDURAL MATTERS

There were no procedural matters that required consideration or a ruling.

### 6. EVIDENCE HEARD

We heard evidence from the applicant, an expert witness, a submitter, and the Council's reporting officer. The following is a summary of the evidence heard at the hearing.

#### 6.1 Applicant's Evidence

##### **Ms Victoria Hall (Counsel)**

Ms Hall said that the applicants have put their heart and soul into developing the subject property for productive purposes during their 10 year ownership to date. She described the vineyard and café as well as a variety of other horticultural and agricultural endeavours.

Ms Hall said that no new dwelling or buildings are proposed except for a small addition to the café. She said that steps had been taken to ensure that rural character, landscape and amenity values are preserved by this subdivision. This includes covenants A to D to protect amenity and address specific concerns of neighbouring landowners.

Ms Hall referred to reports and statements from Mr John Bealing (Agricultural Consultant) and Mr Andrew Burton (Resource Scientist, Land) for the Council who did not oppose the subdivision on the grounds of land productivity values.

Ms Hall considered that Ms Webby had overstated the importance of precedent. She did not consider that there would be anything about this application which would lead to a clash with the provisions of the Plan and there are distinguishing features which will set it apart from other applications for subdivision.

Regarding the need for a variation, Ms Hall said that it is clear that circumstances have changed since the original condition was placed on the existing consent for the café which prohibited subdivision for 20 years. That condition was volunteered at that time and, as such, the condition has no particular resource management

function. She said that the changed circumstances relate to the change in family support and resources and rationalisation of the productive capacities of the land.

Ms Hall opposed the imposition of a consent notice prohibiting further subdivision. She considered that this mechanism should be used sparingly for situations such as protection of very high class soils.

Ms Hall said that this is a case of allowing an applicant to use the productive part of the land and do what they need to do for themselves and their families while ensuring that issues are not created for the environment or other people.

#### **Mr Wolfram Gessler (Applicant)**

Mr Gessler outlined his and his wife's history as doctors and their development of the subject land. He said that the productivity has been increased markedly since they purchased it. He said that in the last three years they have had no income from the vineyard but have maintained it.

He said that the task of maintaining the whole property is beyond two people. The property has been on the market for three years without serious interest. He said that the size of the property and the amount of work involved is clearly the significant impediment to people being interested in buying the property. People have told him that the price being asked is not the issue.

Mr Gessler identified the erosion problems they have had on the hill slopes with the cattle they have run on the land. He said that they are now trying to grow trees amongst the gorse and broom.

#### **Ms Jane Hilson (Consultant Planner)**

Ms Hilson addressed the concerns of each of the submitters. She said that the volunteered covenants will have a positive outcome in terms of maintaining an existing rural landscape uncluttered by buildings.

Ms Hilson supported Ms Hall's consideration about the variation to Condition 9 by saying that the condition was volunteered by the applicants, rather than being a well reasoned restriction imposed. She emphasised that Condition 9 does not prevent subdivision in the long term. Ms Hilson said she is unaware of any 20 year subdivision prohibitions, and further is only aware of very few term-limited subdivision prohibitions.

Regarding the productivity of proposed Lot 1, Ms Hilson said that the land productivity report and other assessments suggest that the hill is of low productivity (Class E) and the effects of subdividing it off will be minor. The good quality land will be contained in proposed Lots 2 and 3.

## **6.2 Submitters Evidence**

#### **Mr Ed Stevens**

Mr Stevens said that he does not believe that the applicants intend to stay on the property. He said that people come and go but the land stays. He said it is all about the best fit and stewardship of the land. He objected to "yet another lifestyle block".

He said that in the past the property has been economic and family sustainable. The present application is more a reflection of the owners' inability to effectively manage

the farm. He said that one half without the other is neither here nor there and diminishes the value as an economic unit for both halves.

Mr Stevens had reservations about the access to proposed Lot 1 with the odd angles and narrow formation.

Mr Stevens emphasised his desire not to have trees on the skyline or near the boundary where they may shade his pasture.

Mr Stevens was asked to describe his own farm. He said it is 33 hectares of Rural 2 land with deer and cattle. He said that the farm holds its own economically. When describing the applicants' property he said that the rear has been left to deteriorate and the farm has the potential to be productive but it would be very expensive to retrieve it from this point.

Councillor Ensor asked if splitting the property will decrease its economic potential. Mr Stevens said that the front is already struggling and the back block would be a lifestyle block with no income potential at all. Councillor Mirfin asked Mr Stevens if he could make a living off the applicants' property. Mr Stevens said that he could not as it has deteriorated too far.

Regarding lifestyle blocks, Mr Stevens said that they have two major issues: Trees on boundaries that shade and cause damage to fences; and cross-border disputes usually over dogs or cats.

### **6.3 Council's Reporting Officer's Report and Evidence**

Ms Webby's report addressed the rural character, landscape and amenity values; rural land productivity values; servicing; reverse sensitivity; precedent; and several other more minor matters.

Ms Webby's report found that the rural character, landscape and amenity values would be protected by the covenants that had been volunteered. As future dwelling locations are to be limited essentially to the existing sites there will be greater certainty in maintaining an uncluttered rural landscape.

Ms Webby in her report said that the productive flat soils are Class A while the hill soils are derived from separation point granite and are Class E. She said that the proposal will not break up the Class A land.

Ms Webby in her report, raised a concern that deletion of a previously volunteered condition could lead to a precedent of other prospective applicants applying for the deletion of similar volunteered conditions. She recognised there are distinguishing factors in this case.

In speaking to her report Ms Webby sought that a "no further subdivision" condition be imposed, that passing bays be required every 50 metres on the right-of-way, and that any addition to the café comply with the TRMP in terms of self-contained housekeeping units.

Ms Webby accepted that it was appropriate that Condition 9 or RM041406 be entirely deleted otherwise there would be inconsistency and conflict between that consent and the current subdivision consent RM120045.

Ms Webby also tabled a map of the productive land classification. The map demonstrated the relatively small isolated unit of Class E land that makes up the hill portion of the subject property.

#### **6.4 Applicant's Right of Reply**

Mrs Hall said that the applicant has considered shortening the right-of-way way access to Lot 1 to avoid going through the vineyard. A revised alignment for the right-of-way was tabled.

Ms Hall re-emphasised that the property is currently not an economic unit according to the Bealing report. Indeed, Mr Stevens does not see the property as an economic unit.

Ms Hall considered 23 hectares to be too big an area to be considered as a lifestyle block.

### **7. PRINCIPAL ISSUES AND OUR MAIN FINDINGS**

The principal issues that were in contention and our main findings on these issues are:

**a) To what extent will the proposed subdivision affect rural character, landscape and amenity values?**

The proposed subdivision will have little effect beyond what can currently be done by the landowners. The subdivision will result in an increase in residential activity at the location of the existing café but this will have little or no effect on the overall amenity of the area.

The house on proposed Lot 1 is already authorised and the subdivision will not create any significant additional development rights beyond what already exist. We agree with Ms Webby and Ms Hilson that the covenants will effectively protect many rural character, landscape and amenity values both for the immediately adjoining landowners, including Mr Stevens, and for the wider Ngatimoti area. These restrictions are volunteered and will restrict the landowners more greatly than if no subdivision had occurred.

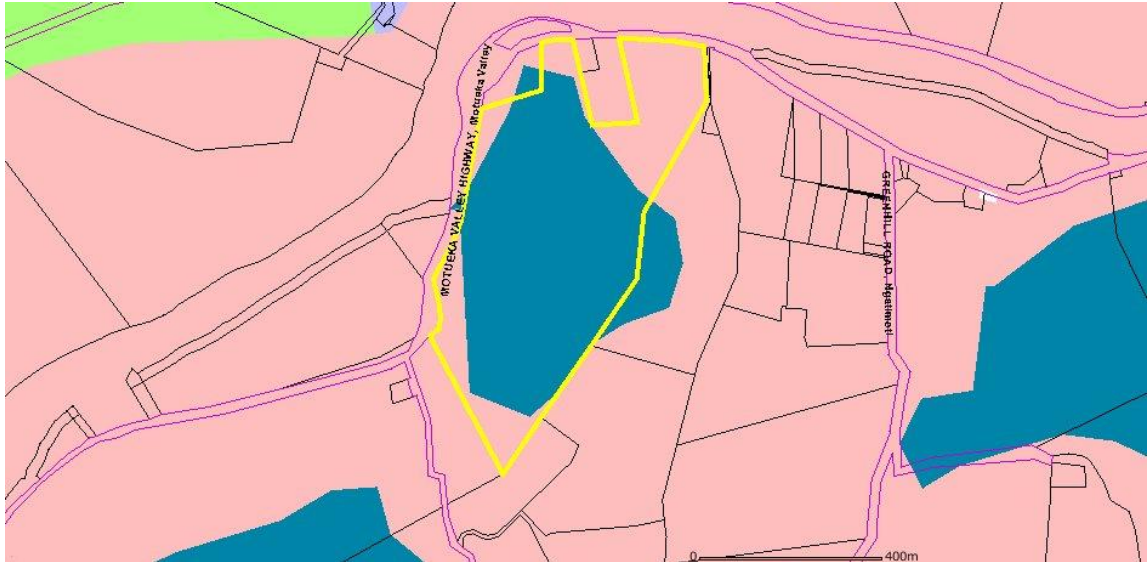
In short, from a rural character, landscape and amenity point of view we expect the effects to be positive when compared to what could happen as of right by the landowner under the permitted Rural 2 rules.

**b) To what extent will the proposed subdivision adversely affect rural productive values?**

For us this is the real crux of the decision on this application. We accept the evidence of all parties - both expert and lay - that the hilly land that is more or less encompassed by proposed Lot 1 is in a degraded state (from a traditional productivity point of view) and that significant investment would be required to return it to a pastoral use or to use it for silvicultural purposes.



Mr Bealing in his report referred to the hilly land as being Class E while the flat land on proposed Lots 2 and 3 is Class A. Ms Webby provided us with a map which spatially shows the layout of the productive land classifications. This was an important piece of evidence for us to reach our decision and so we have reproduced it in Figure 1 below.



**Figure 1: Productive land classification for subject site and surrounding areas. (Key: Blue - Class E; Salmon - Class A)**

This map shows the hill land of proposed Lot 1 as being an isolated piece of land that, presumably due to its geology (separation point granite), has much lower productivity than the surrounding Class A alluvial soils. It is also relevant that the versatility of the hilly block is also limited by the forest remnant in the centre that is covered by the QEII open space covenant.

The evidence was put to us that the block is currently uneconomic and therefore any subdivision would not significantly adversely affect the economic values of the block. Mr Stevens took the view that the property has been productive and economic in the past and subdividing will just reduce its potential to be economic in the future. Mr Stevens did recognise that it would be a big job, and expensive even for a farmer such as himself to retrieve the hilly parts of the property.

We, the subcommittee responsible for making decisions on resource consents, has been, and continues to be, very sceptical about accepting the argument or justification that subdivision is appropriate due to a lack of economic viability. A number of subdivision consents have been refused in recent years where this was a prominent argument because, in all likelihood with better stewardship and management, the land could be more productive and economic. The other reason is that what may be uneconomic today may become economic in the future with new crops or market trends. Once the land is subdivided it is extremely unlikely to be amalgamated and its essential versatility is reduced.

Having said all of that, and returning to the application at hand, we have been persuaded that the hilly Class E land is not economic under current economic conditions. In considering whether it may become economic in the future we find that it is **very** unlikely for the following reasons.

Mr Stevens told us that the flat land was used for tobacco farming. It is a matter of historical fact that good returns could be made from fairly small areas of tobacco. We are of the opinion that the development and maintenance of the hilly land, even when extensively grazed in the past, was probably not particularly economic and was probably explicitly subsidised by the Government in years gone by, and also implicitly subsidised by the more productive and economic uses of the flat land.

The high cost and probably uneconomic of return from retrieving the hilly land and returning it to pasture or some other productive value without Government subsidy makes it very unlikely that such a retrieval will ever occur.

There is also an argument for maintaining a balance of land types to allow for diversification of rural productive opportunities. But again, in this case, we feel that the less productive hilly land will never make a solid positive financial contribution to the property's financial bottom line.

**c) How satisfactory is the proposed right-of-way to serve proposed Lot 1?**

Overall, we accept the proposed right-of-way for serving the dwelling in proposed Lot 1. We agree with the realignment of the right-of-way that was suggested and volunteered in the applicant's reply. We find that this is appropriate and will allow proposed Lot 2 to be managed more cohesively and less constrained by the right-of-way.

**d) To what extent will the proposal cause reverse sensitivity effects or constrain nearby farming activities?**

Given the restrictions volunteered by way of covenants we find that there will be no increase in sensitivity to rural activities that occur in the Ngatimoti area. The increase in residential activity will be minimal compared to what can happen under the existing 2004 consent.

## **8. RELEVANT STATUTORY PROVISIONS**

### **8.1 Policy Statements and Plan Provisions**

In considering this application, we have had regard to the matters outlined in Section 104 of the Act. In particular, we have had regard to the relevant provisions of the following planning documents:

- a) Tasman Regional Policy Statement (TRPS); and
- b) the Tasman Resource Management Plan (TRMP).

### **8.2 Part 2 Matters**

In considering this application, we have taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act, as well as the overall purpose of the Act as presented in Section 5.

## 9. DECISION

Pursuant to Section 104B of the Act, we **GRANT** subdivision consent, subject to conditions.

Pursuant to Section 104B of the Act, we also **GRANT** the cancellation of Condition 9.1 (including 9.1.1 through to 9.1.3) and the consequential cancellation of Condition 9.2 of RM041406.

## 10. REASONS FOR THE DECISION

### Effects on the Environment

We are satisfied that there will be no adverse effect on rural productive values that will be any more than minor. We accept that the combined Lot 2 and Lot 3 title will be essentially a lifestyle block that is dominated by rural productive uses which will contribute to a greater or lesser extent to a family living. In many ways this appears to already be the case, but with the added financial drain of trying to maintain all the fence lines and control the weeds on the hilly part of the property.

As we have stated above we believe that it is unrealistic to expect that the time, effort and money will be put into turning the hilly part of the property with its poor soils, variable slopes, erosion prone granite geology, QEII covenanted area and susceptibility to weed infestation, back into productive land. Therefore, we also accept that, despite its substantial size, Lot 1 will also be a lifestyle block, but with a focus on regenerating natural values as the scrub is allowed or encouraged to regenerate into bush.

To these findings we reason that it is not always necessary to retrieve or continue to manage in an uneconomic way every piece of land that has been historically farmed. Farming subsidies and lucrative crops such as tobacco are no longer available and so it is appropriate that there may be areas of land which can be allowed to return to native vegetation.

There are benefits in allowing marginal land to regenerate such as provision of habitat for native flora and fauna, and the sequestration of carbon. In the case of Lot 1 the regenerating bush can and will integrate with the existing mature QEII covenanted area and contribute to a more natural backdrop component to Ngatimoti; a community which has a reputation for appreciating the natural environment. Fragments of native bush can add value to the rural landscape rather than just be considered a waste of land.

Therefore, on balance we accept that it is more appropriate to allow this land to be subdivided off, fully cognisant that it may reduce the likelihood that it may be used for traditional productive purposes. But, for the reasons given above, we do not see this as necessarily a bad thing.

We have also given some consideration to the location and nature of this property in relation to Ngatimoti itself. We have had no particular landscape evidence on this matter but see this property as being right on the margin of this developing settlement. Indeed it may be that it is the hill that is part of this property that provides a visual boundary and limit to the settlement of Ngatimoti. The country to the west and south-west of this hill has the feel of being removed from settlement, whereas the

subject property and those to the east seem to be visually and spatially a part of the settlement of Ngatimoti. For these reasons we do not see it as inappropriate that more people be allowed to live in this area to strengthen and add to the cohesiveness of the Ngatimoti community. We see a positive effect in this regard.

Of course we wish to be very clear that this reasoning should not be construed to be condoning the subdivision of good productive land for the purposes of "adding to the Ngatimoti community". We put a paramountcy on the value of good quality productive land (as particularly directed by Objective 7.1.2 of the TRMP and its implementing policies) and including the paragraph above as a reason for this decision is only against the context of our findings on the lack of productivity of a large part of the property.

### **Objectives and Policies of the TRMP**

Ms Webby presented a thorough summary of the relevant objectives and policies of the TRMP that apply to this application. We agree with and, pursuant to Section 113(3) of the Act, adopt Ms Webby's assessment of the application against those objectives and policies.

In particular, regarding the key matter of rural land productive values, we identify that the proposal does not offend Objective 7.1.2 and its associated policies. We also state that Objective 7.2.2 and particularly Policy 7.2.3.2 allows, subject to certain matters, for a proposal of this nature.

Policy 7.2.3.2 states:

*To enable sites in specific locations to be used primarily for rural industrial, tourist services or rural residential purposes (including communal living and papakainga) with any farming or other rural activity being ancillary, having regard to:*

- (a) the productive and versatile values of the land;*
- (d) cross-boundary effects, including any actual and potential adverse effects of existing activities on such future activities;*
- (e) servicing availability;*
- (h) potential for cumulative adverse effects from further land fragmentation;*
- (j) efficient use of the rural land resource;*

In this particular case we consider that the subdivision is justified given that the stated matters are satisfied.

### **Purpose and Principles of the Act**

Adopting a broad overall judgement approach to the purpose of the Act, we are satisfied that the proposal is consistent with Part 2 and achieves sustainable management of natural and physical resources as set out in Section 5 of the Act.

## **11. COMMENTARY ON CONDITIONS OF CONSENT**

We support and have accepted the applicant's suggested re-routing of the right-of-way. We believe that the amended location is a better fit with the applicant's

stated objective of using Lot 2 productively. The route provides potential for more efficient use of Lot 2.

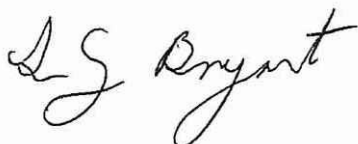
We carefully considered whether a “no further subdivision” condition should be imposed. We have decided that under the circumstances it is not warranted. We accept the evidence of Ms Hilson that such a condition should be imposed for a stated purpose or possibly to avoid a specific risk created by the grant of consent. In this case there is no particular purpose that such a condition would be protecting against. Such a condition would take away the future rights of a landowner to apply for subdivision; a right that is conferred by the Act and the Tasman Resource Management Plan. Any future application will need to be processed against the historical context of this decision, and with regard to the relevant assessment considerations at the time.

## 12. LAPSING OF CONSENT(S)

Pursuant to Section 125(1) of the Act, resource consents, by default, lapse in five years unless they are given effect to it before then.

Section 125(2) of the Act makes particular provision for the lapsing of subdivision consents. This consent is given effect to when a Survey Plan is submitted to the Council for the subdivision under Section 223 of the Act. Once the Survey Plan has been approved by the Council under Section 223 of the Act, the consent lapses three years thereafter unless it has been deposited with the District Land Registrar as outlined in Section 224 of the Act.

Issued this 8<sup>th</sup> day of May 2012



Stuart Bryant  
**Chair of Hearings Committee**

## RESOURCE CONSENT

**RESOURCE CONSENT NUMBER:** RM120045

Pursuant to Section 104B of the Resource Management Act 1991 ("the Act"), the Tasman District Council ("the Council") hereby grants resource consent to:

**W and J Gessler**  
(hereinafter referred to as "the Consent Holder")

### ACTIVITY AUTHORISED BY THIS CONSENT:

To subdivide a 30.70 hectare property into two allotments

### LOCATION DETAILS:

Address of property: 1469 Motueka Valley Road, Ngatimoti  
Legal description: Part Lot 2 DP 6329  
Certificate of title: NL7B/113  
Valuation number: 1928053701  
Easting and Northing: 2499028E 6000432N

Pursuant to Section 108 of the Act, this consent is issued subject to the following conditions:

### CONDITIONS

#### General

1. The subdivision shall be undertaken in accordance with the information submitted with the application and in particular with the plan titled, "*Lots 1 and 2 being proposed Subdivision of Pt Lot 2 DP6329*" dated January 2012 and attached to this consent as Plan A. If there is conflict between the information submitted with the consent application and any conditions of this consent, then the conditions of this consent shall prevail.
2. Notwithstanding Condition 1 the alignment of the right-of-way shall be amended so that it hugs the boundary of Pt Lot V DP 209 in accordance with Plan A.

#### Advice Note:

This intent of this condition was volunteered by the applicant.

#### Easements

3. Easements shall be created over any services located outside the boundaries of the allotments that they serve as easements in gross to the appropriate authority or

appurtenant to the appropriate allotment. The survey plan which is submitted for the purposes of Section 223 of the Act shall include reference to easements.

4. Easements shall be created over any right-of-way and shall be shown in a memorandum of Easements on the survey plan submitted for the purposes of Section 223 of the Act. Easements shall be shown on the land transfer title plan and any documents shall be prepared by a solicitor at the Consent Holder's expense.
5. The survey plan that is submitted for the purposes of Section 223 of the Act shall include reference to easements.

### **Financial Contributions**

6. The Consent Holder shall pay a financial contribution for reserves and community services in accordance with following:
  - (a) the amount of the contribution shall be 5.62 per cent of the total market value of 2,500 square metres (rural)(at the time subdivision consent is granted) of Lot 2;
  - (b) the Consent Holder shall request in writing to the Council's Consent Administration Officer (Subdivision) that the valuation be undertaken. Upon receipt of the written request the valuation shall be undertaken by the Council's valuation provider at the Council's cost;
  - (c) If payment of the financial contribution is not made within two years of the granting of the resource consent, a new valuation shall be obtained in accordance with (b) above, with the exception that the cost of the new valuation shall be paid by the Consent Holder, and the 5.62 per cent contribution shall be recalculated on the current market valuation. Payment shall be made within two years of any new valuation.

#### **Advice Note:**

A copy of the valuation together with an assessment of the financial contribution will be provided by the Council to the Consent Holder.

### **Amalgamation**

7. That Lots 2 and 3 hereon be held in the same computer freehold register.

Land Information New Zealand reference: 1062714

### **Right-of-way Formation**

8. The right-of-way access formation shall be widened every 50 metres to no less than 5.5 metres for a minimum distance of 9 metres to provide passing bays.
9. The right-of-way access formation shall be relocated to location of the legal right-of-way route specified in Condition 2 of this consent.

### **Consent Notices (Lots 1 and 2)**

10. The following consent notices shall be registered on the certificate of title for Lots 1 and 2 DPXXX pursuant to Section 221 of the Act.

- (a) The construction of any buildings within that part of Lot 1 shown as area A on survey plan is prohibited in perpetuity.
- (b) The construction of any buildings within that part of Lot 2 shown as area B on survey plan is prohibited in perpetuity.
- (c) The construction of any dwellings, workers accommodation or other residential activity within that part of Lot 1 shown as areas C and D on survey plan is prohibited in perpetuity. (Farm buildings are permitted)
- (d) No trees are to be planted within that part of Lot 1 shown as area D on the survey plan
- (e) The building location area for the dwelling on Lot 1 is limited to the 2500 m<sup>2</sup> residential curtilage area around the existing dwelling.
- (f) The building location area for the dwelling on Lot 2 is limited to a 2500 m<sup>2</sup> residential curtilage area around the existing café building.
- (g) At the time of any building consent application for any new dwelling within the residential building location area on Lot 2, a wastewater report from a suitable qualified person recognised as such by Council will be required. This report will need to confirm either that the existing wastewater system has capacity for increased loading or specify any required upgrade/replacement design criteria.
- (h) If during any site disturbance works, any material is found that may have any archaeological significance, all work should stop immediately and the Consent Holder should contact Tiakina te Taiao, the Tasman District Council and the New Zealand Historic Places Trust, who should be consulted so that appropriate action pursuant to the Historic Places Act 1991 is undertaken.

These consent notices shall be prepared by the Consent Holder's solicitor at the Consent Holder's expense and shall be complied with by the Consent Holder and subsequent owners on an ongoing basis. All costs associated with approval and registration of the consent notice shall be paid by the Consent Holder.

## **GENERAL ADVICE NOTES**

### **Council Regulations**

1. This is not a building consent and the Consent Holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

### **Other Tasman Resource Management Plan Provisions**

2. This resource consent only authorises the activity described above. Any matters or activities not referred to in this consent or covered by the conditions must either:
  1. comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (TRMP);
  2. be allowed by the Resource Management Act; or
  3. be authorised by a separate resource consent.



## Consent Holder

3. This consent is granted to the abovementioned Consent Holder but Section 134 of the Act states that such land use consents “attach to the land” and accordingly may be enjoyed by any subsequent owners and occupiers of the land. Therefore, any reference to “Consent Holder” in the conditions shall mean the current owners and occupiers of the subject land. Any new owners or occupiers should therefore familiarise themselves with the conditions of this consent, as there may be conditions that are required to be complied with on an ongoing basis.

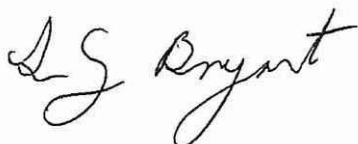
## Development Contributions

4. The Development Contributions Policy is found in the Long Term Council Community Plan (LTCCP) and the amount to be paid will be in accordance with the requirements that are current at the time the relevant development contribution is paid in full.

This consent will attract a development contribution on Lot 2 for the proposed dwelling in respect of roading.

Council will not issue a completion certificate pursuant to Section 224(c) of the Act in relation to this subdivision until all development contributions have been paid in accordance with Council’s Development Contributions Policy under the Local Government Act 2002.

Issued this 8<sup>th</sup> day of May 2012



Stuart Bryant  
**Chair of Hearings Committee**

## RESOURCE CONSENT

**RESOURCE CONSENT NUMBER:** RM041406V1

Pursuant to Section 104B of the Resource Management Act 1991 (“the Act”), the Tasman District Council (“the Council”) hereby grants resource consent to:

**W and J Gessler**  
(hereinafter referred to as “the Consent Holder”)

### ACTIVITY AUTHORISED BY THIS CONSENT:

To establish and operate a winery, café and wine-tasting with associated signage and for a proposed new access to the Motueka Valley Highway and earthworks that have already been carried out to provide access to the building platform for the future new dwelling on the site.

### LOCATION DETAILS:

Address of property: 1469 Motueka Valley Road, Ngatimoti  
Legal description: Part Lot 2 DP 6329  
Certificate of title: NL7B/113  
Valuation number: 1928053701  
Easting and Northing: 2499028E 6000432N

Pursuant to Section 108 of the Act, this consent is issued subject to the following conditions:

### CONDITIONS

#### 1. General

- 1.1 The establishment and operation of the activity shall, unless otherwise provided for in the conditions of the consent, be undertaken in accordance with the documentation and plans submitted with the application with the exception that the proposed access shall be in accordance with the amended engineering details and amended site plans submitted and which are attached hereto.
- 1.2 In addition the activity may include the retail sale of basic food items to service local resident needs and tourist related ancillary items provided such activities are clearly of a minor and subservient nature to the cafe/wine tasting activity.

## 2. Hours of Operation

- 2.1 Hours of operation shall be as detailed in the application lodged with the application, i.e. six days a week from noon to 11.00 pm during the period from 1 December to 28/29 February and up to three days a week from noon to 11.00 pm at other times.
- 2.2 The day that the premises shall be closed during the peak period has been confirmed by the applicant to be Monday.

**Advisory Note:** Hours of operation do not include work undertaken by winery/café staff such as cleaning and cooking etc or to vineyard workers but relates to the days and times that the premises are open for customers and customers shall be expected to be off the premise no later than 11.30 pm.

## 3. Access and Parking

- 3.1 The design of the road crossing and entry access to the subject property shall be in accordance with the amended site plan (amended date 18/2/05) as approved by Council Engineering Staff (copy attached) and in additions any gateway on the access recessed from the front boundary a minimum of 5.0 metres so as to enable vehicles entering the property (including vehicles collecting/delivering to the gate) to safely park clear of the road carriageway.
- 3.2 Notwithstanding the provisions of the approved site plan, the crossing, entranceway and the first 10 metres of access within the property boundary shall have a minimum formed and sealed width of 6.0 metres.
- 3.3 In addition to the crossing and entranceway, the entire length of the access to the winery/cafe shall be provided with a minimum formed, durable all-weather dust-free finish. Those parts of the access to the proposed dwelling that have a gradient in excess of 1 in 5 shall be provided with a concrete or similar robust sealed finish which shall be provided with a durable skid-resistant finish. The parking areas surrounding the buildings shall be completed to a durable all-weather dust free standard.
- 3.4 The access shall incorporate adequate provision for side channels, and where necessary culverts to adequately dispose of stormwater within the site.
- 3.5 All works shall be constructed and maintained to a durable standard comparable to Council's Engineering Standards and Policies 2004.
- 3.6 The consent holder shall erect the following advisory signs:
  - 3.6.1 Signs indicating "20 kph Maximum Speed" at either end of the winery/café access, and
  - 3.6.2 A "stop" sign at the exit to the property.
  - 3.6.3 Each of the aforementioned signs shall be no more than 0.5 m<sup>2</sup> area and 2 metres high with lettering at least 100 mm high.
- 3.7 Car parks shall comprise two car parks for the dwelling housekeeping unit. There shall be four additional car park provided for the winery (based on a gross floor area

of 200 m<sup>2</sup>) otherwise car parking for the winery shall be one car park for every 50 m<sup>2</sup> for the industrial activity in accordance with Figure 16.2d of the Proposed Tasman Resource Management Plan. Car parking for the café shall be six car parks (based on a maximum occupancy of 24 persons) plus additional carparks for the wine tasting facility based on one car park for every 35 m<sup>2</sup> gross floor area of that facility. The location of car parks for the units shall be confirmed at the time that detailed plans for building consent are submitted to Council but all car parks are to be readily accessible to the activity they service and shall facilitate on-site turning for largest class of vehicle likely to need access to the site on a regular basis.

- 3.8 Each car park shall be adequately marked for ease of identification and to ensure customers are able to park their vehicles in an efficient and orderly manner.

**Advisory Note:** No provision has been made for coach access or parking. If the consent holder wishes to make provision for coaches such an amendment will necessitate a variation to this consent.

#### 4. Potable Water

- 4.1 All water used for the activities shall be of an adequate quantity and of potable standard complying with New Zealand Guidelines for Drinking Water. Unless resource consent is obtained, any take of water shall comply with permitted activity provisions of the Proposed Tasman Resource Management Plan for water takes for domestic use.
- 4.2 The new dwelling is to be provided with minimum 23,000 litre water storage tank and which shall be fitted with a 50 mm Camlock coupling to enable connection with rural fire-fighting equipment and this tank shall be maintained at 90 percent capacity at all times for emergency use. The tanks are to be located in a location that will enable use for fighting any fire at the dwelling.

#### 5. Amenity

- 5.1 The consent holder shall commission a person with appropriate experience in landscape design to prepare a landscape plan which shall be based on the Landscape Report submitted with the application but shall include a planting programme and planting maintenance schedule and shall include additional provisions for native species planting to help visually and acoustically screen traffic movement along the access and parking areas from adjoining residences.
- 5.2 The landscape plan (including planting programme and planting maintenance schedules) shall be submitted to the Environment & Planning Manager, of the Tasman District Council for approval at the time that building consent is applied for the development. All planting shall be undertaken during the first growing season after approval of the plan has been given and shall be maintained thereafter in accordance with the maintenance schedule.
- 5.3 The landscaping plan shall also include architectural issues regarding the exterior walls and roofs of the winery, café and new dwelling which shall be painted and maintained in non-shiny recessive colours which blend in with the neighbouring rural environment.

**Advisory Note:** The proposed use of “Coloursteel” “Pioneer Red” for the exterior cladding of the proposed winery is considered to comply with condition 5.3.

## 6. Sale Of Liquor

6.1 The application includes provision for a sale and consumption of alcohol and the following conditions specifically relate to that part of the activity:

6.1.1 Liquor for sale shall be limited to bottled beers and bottled wines and also fortified coffees (Liqueur and “Irish: Coffees).

6.1.2 Beer and Liqueur Coffees may only be sold to persons who are present on the premises for the purpose of dining.

6.1.3 Bottled wines for sale off the premises shall be limited those produced from the property.

6.1.4 “Premises” for the purpose of this consent shall be the café/wine tasting facility and garden to the north and east of the café/wine tasting facility.

**Advisory Notes:** The condition permits for the general sale of bottled wines, beers and liqueur coffees on the premises as an adjunct to the principal purpose of persons dining on the premises; however bottled wines produced from the vineyard on the property (whether or not the grapes harvested from the property are processed/bottled on or off site) may be sold for consumption off the premises and to include tasting of such wines on the premises.

The above resource consent conditions are without prejudice to any application made pursuant to the Sale of Liquor Act 1989 but the Council expects that the aforesaid resource consent conditions will be incorporated into conditions of any liquor licence issued pursuant to the Sale of Liquor Act 1989.

## 7. Activity Signs

7.1 A single sign on the subject property may be erected having a maximum area of 2.0 m<sup>2</sup> and to the design and in a location as provided for a controlled activity in the Tasman Resource Management Plan Rules (extract attached).

7.2 The sign shall contain the words “Ngatimoti Wines - Café and Tastings” and with a detachable “Open - Closed” below the main sign.

**Advisory Note:** this does not preclude the placement of advisory signs within the property to facilitate customer parking etc. and include the advisory signs referred to in conditions 2.7. It also does not preclude the provision of any authorised road transport information signs approved by Council’s Roading Asset Engineers.

7.3 Nothing on the sign and any other media advertising for the activity shall allude to the sale of basic food commodities and/or ancillary tourist type paraphernalia as described in the letter from Hugh Briggs Partnership dated 27 January 2005 (copy attached).

## 8. Archaeological Sites

8.1 In the event any archaeological site is discovered during the excavations associated with any form of land disturbance, all works shall cease and the applicant shall contact the Tasman District Council, local Iwi and the New Zealand Historic Places Trust.

**Advisory Note:** Council is aware of existing pre-European archaeological sites in this area and there is a strong possibility of further sites existing. The discovery of an archaeological site is subject to the provisions of the Historic Places Act and an application must be made to the Historic Places Trust for an authority to modify or destroy the site. It has been noted from the archaeological report submitted with the application however that disturbance of the known archaeological sites by this activity will be unlikely.

*[Condition 9 deleted via Section 127 of the Act]*

## 10. Commencement of Consent

10.1 The Resource Consent holder shall advise Council when the activity commences so that monitoring of conditions can be programmed.

## 11. Review of Conditions

11.1 The Council may review Conditions 2, 3 and 6 by giving notice of its intention so to do pursuant to Section 128 of the Resource Management Act 1991 at any time within the period commencing from the date of giving effect to this consent of this consent and every 12 months thereafter.

11.2 The purpose of such review would be to deal with any adverse effect on the environment which may arise, and is appropriate to deal with at a later stage, because it is not presently known what would be required of the consent holder to adopt the best practical option to reduce the adverse effects on the environment.

11.3 The particular issues, which Council will consider in its review, would be in regards to:

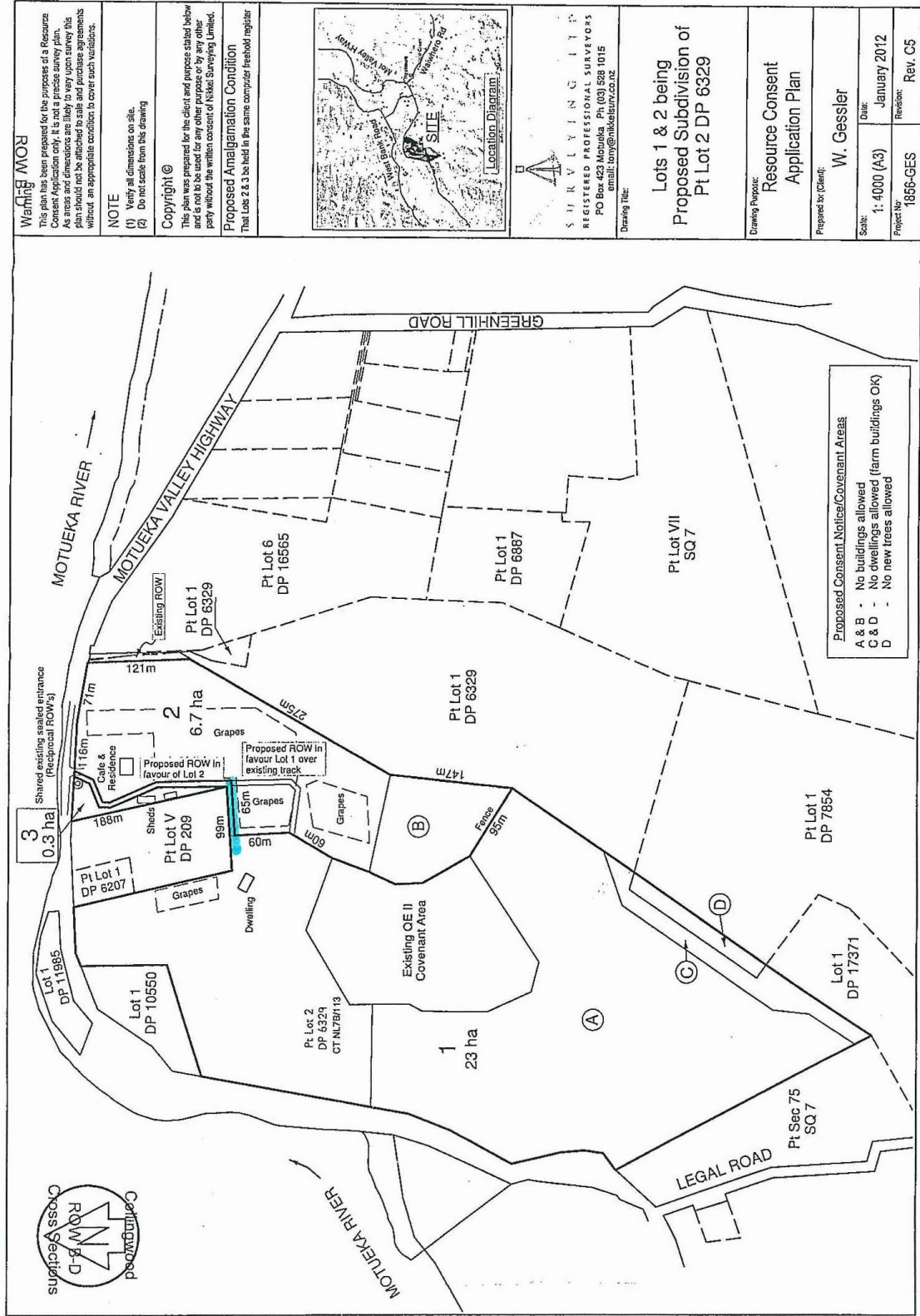
- Conditions listed under 2 relating to access and hours of operation;
- Conditions listed under 3 relating to access and parking; and
- Conditions listed under 6 relating to sale of liquor.

Issued this 8<sup>th</sup> day of May 2012



Stuart Bryant  
**Chair of Hearings Committee**

# PLAN A - SUBDIVISION PLAN (RM120045)



Date Confirmed:

Chair: