



STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Mark Morris- Co-ordinator Consents (Subdivisions)

REFERENCE: RM070215

SUBJECT: **WOOLLASTON ESTATES HOLDINGS LIMITED - REPORT EP07/09/04** - Report prepared for 10 September 2007 hearing

1. INTRODUCTION

- 1.1 I recently approved a subdivision consent under delegated authority. The applicant has sought to change the name of the consent holders and this agreed to under delegated authority. One of the conditions of consent has been objected to by the applicant.
- 1.2 The Resource Management Act 1991 requires the Committee to consider the objection and may dismiss or uphold the objection wholly or partly.

2. BACKGROUND

- 2.1 The land consists of three adjoining rural titles with frontage and access to three roads being George Harvey Road on the northern boundary, Old Coach Road on the eastern boundary, and School Road on the southern boundary. The land is virtually all planted in grapes as part of the Woollaston Estates vineyard operation, with a large winery near the southern boundary. The property contains four dwellings, one near Old Coach Road which (according to the application) is occupied by Phillip and Chan Woollaston. In the centre of the property is another large dwelling occupied by Glenn Schaeffer, an owner of Woollaston Estates. There are two more dwellings which are used as workers' accommodation for employees of the vineyard and winery operation. Refer Appendix "A".
- 2.2 The legal description of the land is:
- a) Lot 4 DP 11335 (CT 6D/956) containing 19.6040 hectares. The registered proprietor of the land is P T E Woollaston.
 - b) Lot 1 DP 308296 (CT 32075) containing 0.559 hectares. The registered proprietor of the land is Woollaston Estates Holdings Limited.
 - c) Lot 2 DP 308296 and Lot 1 DP 18195 (CT 32076). The registered proprietor is Woollaston Estates Holdings Limited.
- 2.3 The land is zoned rural 1 under the Tasman Resource Management Plan.

3. SUBDIVISION PROPOSAL

- 3.1 The proposal was to relocate boundaries of the three titles, to create one large title of the vineyard (lot 1) and a title each for the Woollaston house (Lot 3) and the Schaeffer house (lot 2)
- 3.2 The proposed new title areas were:
- a) Lot 1 of 34.5 hectares, containing all the vineyard, the winery and the two workers' accommodation dwellings.
 - b) Lot 2 of 2.08 hectares, containing the Schaeffer house.
 - c) Lot 3 of 1.54 hectares, contain the Woollaston house.
 - d) Lot 4-7 of between 42 m² and 655 m² to vest as road, to ensure that all parts of the adjoining Old Coach Road formation and footpath are contained within road reserve.

4. ISSUES

- 4.1 The main issue with this subdivision was that the main vineyard block could be further subdivided as a controlled activity as it was well over 12 hectares. Controlled activity subdivisions must be approved.
- 4.2 That is, the boundary adjustment as applied for provides an opportunity for the creation of an additional title as a controlled activity. Without the boundary adjustment that opportunity does not exist.
- 4.3 The opportunity for an additional title is a potential adverse effect relating to the fragmentation of productive rural land that the District Plan seeks to avoid.

5. SOLUTION

- 5.1 Fortunately in the case of this subdivision, the application also including the volunteering of a covenant preventing further subdivision of Lot 1.

The application stated in page four (paragraph 1) of the application:

“Woollaston Estates plan no further subdivision of proposed Lot 1 as they have put considerable investment into this site to develop it as a single vineyard & winery. Notwithstanding this the applicant would be prepared to volunteer a covenant against further subdivision of proposed Lot 1 if needed.”

- 5.2 On the basis of the volunteered covenant preventing further subdivision of Lot 1, Councils staff were satisfied that adverse effects in terms of on-going fragmentation of productive land had been mitigated.
- 5.3 The consent was issued on 4 July 2007 (appendix “B”) with the following condition 7:

“The following consent notice shall be imposed on Lot 1 pursuant to Sections 108 and 221 of the Resource Management Act 1991:

- (a) *Any further subdivision of Lot 1 that creates additional titles or any application being made to subdivide lot 1, shall be prohibited.*

The consent notice 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."

6. OBJECTION

6.1 The applicant is now objecting to this condition (see appendix C) on the basis that the above condition was not volunteered by the applicant and that the condition would:

- *Negatively affect the company's valuation*
- *Potentially inhibit the company's ability to raise capital necessary to continue its expansion toward full production and profitability'*
- *Restrict future options available for the efficient organisation of the company's business.*

7. ASSESSMENT

7.1 The condition was not "imposed" on the applicant, because it was clearly volunteered with the application, so no negotiation was required with the applicant.

7.2. Volunteered conditions are common with resource consents to ensure that certain environment outcomes are met , by way of requiring something beyond what the Plan requires or restricting something that could be normally be done "as of right".

7.3 In this case the outcome was the creation of larger more versatile vineyard block, that could not be further subdivided. The only realistic way that this could be achieved for this site was by way of a volunteered condition preventing further subdivision of the vineyard block. The alternative would have been the decline of consent on the basis the proposed boundary relocation will lead to further fragmentation of productive rural land.

7.4 The Council staff acted in good faith, on the basis of the volunteering of the condition prohibiting of any further subdivision of Lot 1. The applicant is now objecting to this condition on the basis that it was not volunteered by the applicant.

7.5 If the condition had not been volunteered in the application, then the outcome of the application would have a quite different in that it is likely that the application would have be declined on the basis of fragmentation of productive land.

7.6 However, the consent has been issued, and the consent holder has a right to exercise that consent.

7.7 The removal of condition 7 would undermine the whole basis of issuing the decision in the first place. The only fair way of dealing with this matter is for the applicant to withdraw their consent and reapply without the volunteered condition.

- 7.8 It is quite clear that the horticultural industry in the Tasman District is changing rapidly with landholdings getting larger and larger to remain viable. This means that often orchardists or vineyard operators are often buying neighbouring properties and selling off the surplus dwellings by way of boundary relocations whereby a larger balance productive area is retained in one large title to in exchange for the smaller dwelling titles. The volunteering of the no further subdivision covenants enable Council to ensure that the anticipated outcomes of avoiding further fragmentation of productive land.
- 7.9 If the this objection is upheld then the integrity of the process of allowing boundary relocations with no subdivision covenants would be severely undermined, which would mean future similar boundary relocations may need to be declined on the basis that they will result in fragmentation of productive land.

8. CONCLUSION

- 8.1 Condition 7 of RM070215 is required to avoid the ongoing fragmentation of productive land, as required by the policies and objectives of the Council's Planning documents.
- 8.2 The restriction on further subdivision of Lot 1, which was volunteered as part of the application was an integral part of:
1. The decision to deal with the decision on a non-notified basis; and
 2. The decision to approve the application.
- 8.3 The condition should therefore remain.
- 8.4 There are important precedent issues for volunteered conditions if the applicant can simply seek the removal of the condition as soon as the consent has issued.
- 8.5 While I understand that there may have been a misunderstanding between the applicant and his agent over the volunteering of this condition, the only fair and equitable way to deal with this issue is for the applicant to withdraw the application and reapply without the volunteered condition. This would enable the issues to be dealt with in a fair and transparent manner. However, I accept that it is up to the applicant if they want to do that.

9. RECOMMENDATION

- 9.1 That the Committee as provided for by Section 357(7)(a) Resource Management Act decline the objection.

M D Morris
Consents Co-ordinator (Subdivisions)



RESOURCE CONSENT DECISION

Resource consent number: RM070215

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

Phillip Tosswill Woollaston

(hereinafter referred to as "the Consent Holder")

Activity authorised by this consent: To subdivide Lots 1 and 2 DP 308296 and Lot 4 DP 11335 into seven allotments; Lot 1 being 34.5 hectares; Lot 2 being 2.08 hectares (containing an existing dwelling); Lot 3 of 1.54 hectares (containing an existing dwelling) and Lots 4-7 to vest as road.

Location details:

Address of property: Old Coach Road, Mahana.
 Legal description: Lots 1 and 2 DP 308296 and Lot 4 DP 11335
 Certificates of title: CTs NL6D/956, 32075 and 32076
 Valuation number: 1938064001 and 1938063900

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

CONDITIONS

1 Application Plan

The subdivision shall be in accordance with the John West Surveys Ltd Plan No. JWSA73 attached to this consent as Plan A and dated February 2007.

2 Road to Vest

Lots 4-7 shall vest as road, with Lot 4 being extended to include a 5 metre by 5 metre corner snipe at the George Harvey Road/Old Coach Road intersection. No compensation will be payable for the land vesting as road.

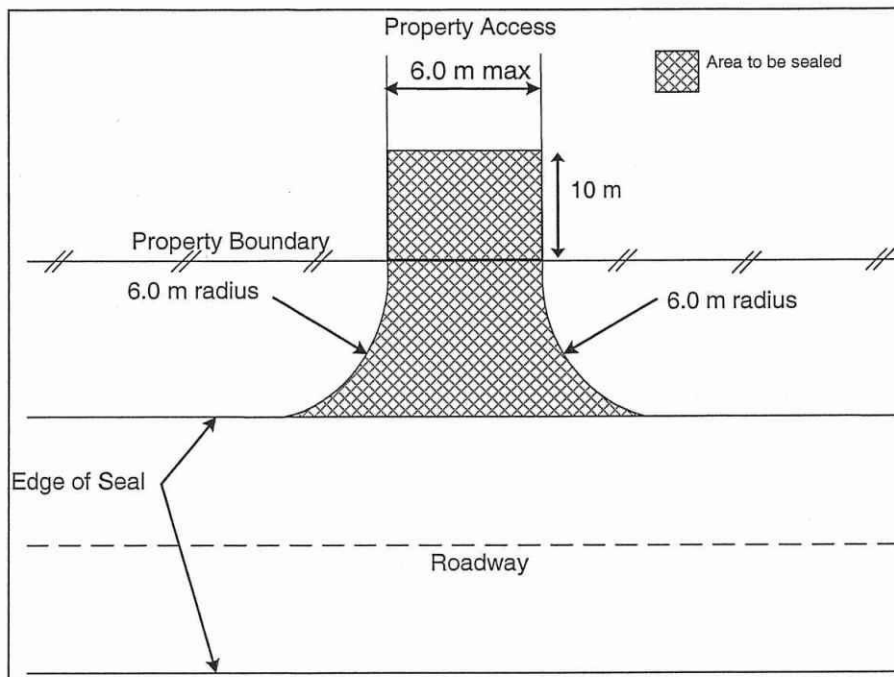
3 Easements

Easements are to be created over any services located outside the boundaries of the allotments that they serve as easements in gross to the Tasman District Council or appurtenant to the appropriate allotment. Reference to easements is to be included in the Council resolution on the title plan.

The existing formation of the rights of way is accepted except for the right of way A entrance on to Old Coach Road, which is covered by Condition 4.

4 A sealed vehicle crossing shall be formed to service each of Lots 2 and 3. For the purposes of this condition, "sealed" shall mean a surface that has, as a minimum, a Grade 4 chip first coat, on top of a minimum of 150 millimetres of compacted basecourse, overlain by a Grade 6 void fill second coat.

5 The vehicle crossing shall be constructed in accordance with the design shown below.



- 6 At the completion of works, a suitably experienced chartered professional engineer or surveyor shall provide Council with written certification that the works have been constructed to the standards required.
- 7 The following consent notice shall be imposed on Lot 1 pursuant to Sections 108 and 221 of the Resource Management Act 1991:
 - (a) Any further subdivision of Lot 1 that creates any additional titles or any application being made to subdivide Lot 1, except for minor boundary adjustments, shall be prohibited.

The consent notice 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.

Advice Note:

This condition has been volunteered by the applicant.

REASONS FOR THE DECISION

Background to Proposed Activity

The purpose of the subdivision is to allow the Woollaston Estates vineyard and winery, which is currently spread over three titles, to be all included in one single certificate of title, with each of the dwellings of the two owners of the vineyard to be on separate certificates of title.

The vineyard block would also contain two existing dwellings, both of which are used for worker accommodation for workers employed in the vineyard. This situation will not be changed by the subdivision.

The vineyard is one of the largest single vineyards in the Moutere. The applicant has invested a substantial capital expenditure in converting the previous orchard into a highly productive vineyard together with the substantial winery, which also processes grapes from the other vineyards operated by Woollaston Estates.

It is highly unlikely that, given this long-term investment, that the vineyard will need to be further subdivided. However, because the PTRMP allows controlled activity subdivisions down to a 12 hectare minimum lot size, the applicant has volunteered a self-imposed consent notice on Lot 1, prohibiting any further subdivision that results in any additional titles.

The subdivision consent does not involve the creation of any existing titles, nor does it change the development potential of any of the titles. Because each of the titles will contain existing dwellings, there will be no as-of-right potential for any further dwellings on the site.

Proposed Tasman Resource Management Plan ("PTRMP") Zoning, Area, and Rules Affected

According to the PTRMP the following apply to the subject property:

Zoning: Rural 1
Area(s): Land Disturbance Area 1

No person may subdivide land within Tasman District as a permitted activity according to the PTRMP. The activity authorised by this resource consent is deemed to be a discretionary activity in accordance with Rule 16.3.7A of the PTRMP.

Principal Issues (Actual and Potential Effects on the Environment)

The principal issue(s) associated with the proposed activity involve the actual and potential effects on the environment. For this application these were:

- (a) rural land fragmentation;
- (b) productive versatility.

The Council considers that the adverse effects of the activity on the environment will be no more than minor for the following reasons:

- (a) the subdivision will not result in any additional allotments and will not change the development potential of any of the titles;
- (b) the amalgamated Lot 1, being 34 hectares in area, will retain a high level of productive versatility, to ensure the long-term productive use of the site. To ensure that the vineyard remains in one title, the Consent Holder has volunteered a consent notice prohibiting any further subdivision that will result in additional titles;
- (c) proposed Lots 2 and 3 are much smaller in size than Lot 1, being 1.5 hectares and 2.08 hectares in area, but these areas simply reflect the existing residential curtilage and will not result in loss of productive land.

Relevant Statutory Provisions

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

- (a) the Tasman Regional Policy Statement (TRPS);
- (b) the Transitional District Plan;
- (c) the proposed Tasman Resource Management Plan (PTRMP).

Most of the objectives and policies contained within the TRPS are mirrored in the PTRMP. The activity is considered to be consistent with the relevant objectives and policies contained in Chapters 5 and 7 of the PTRMP.

Part II Matters

The Council has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act and it is considered that granting this resource consent achieves the purpose of the Act as presented in Section 5.

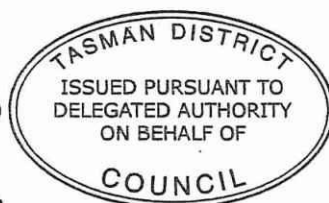
Notification and Affected Parties

The adverse environmental effects of the activity are considered to be no more than minor. The Council's Co-ordinator Resource Consents has, under the authority delegated to him, decided that the provisions of Section 94(2) of the Act have been met and therefore the application has been processed without notification.

This consent is granted on **4 July 2007** under delegated authority from the Tasman District Council by:



Mark Morris
Senior Consent Planner, Subdivision

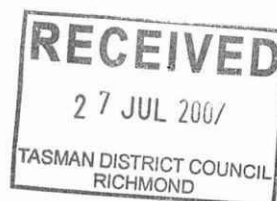




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26 July 2007

The Manager
 Environment and Planning Department
 Tasman District Council
 Private Bag 4
 RICHMOND



Dear Sir

Notice of objection to conditions of Resource Consent – RM070215

I wish to lodge an objection to condition 7 of the above consent, and also to ask that it be amended to identify the applicant / consent holder as **Woollaston Estates Holdings Limited** (referred to below as 'the Company').

We are happy to accept the other conditions.

Outcomes sought: deletion of condition 7; correct identification of applicant.

Reasons: Condition 7 affects the title to the Company's most significant asset. In doing so it is likely to:

- negatively affect the Company's valuation,
- potentially inhibit the Company's ability to raise capital necessary to continue its expansion toward full production and profitability,
- restrict future options available for the efficient organisation of the Company's business.

I note that the consent contains an Advice Note that this condition was volunteered. I understand that a willingness to accept an undefined 'covenant against future subdivision' was offered by the surveyor without my knowledge, at the request or suggestion of the Council.

Having raised my concerns about condition 7 with Council staff, I was advised by email yesterday that my only recourse is to lodge a formal objection to it. As the deadline for so doing is tomorrow, I have not yet had time to take advice or assemble detailed evidence in support of the above reasons. These will be furnished by the Company's solicitor, Pitt & Moore as soon as is practicable.

Yours sincerely

Philip Woollaston
 CEO, Woollaston Estates Holdings Limited

Cc: Graham Allen, Pitt & Moore

13 July, 2007

Mark Morris
Senior Consent Planner, Subdivision
Tasman District Council
Private Bag 4
RICHMOND



Resource Consent number RM070215

Dear Mark

As discussed I am writing to clarify a couple of misunderstandings in relation to the above application in the hope that it can be re-issued in a modified form. I apologise for these, the result of mis-communication between me and our surveyor. Unfortunately, while I saw a draft of the scheme plan, for some reason I did not see the text of the accompanying letter until last Friday.

1. Name of Applicant

The application names me personally as the applicant (though headed 'Woollaston Estates'). The applicant is in fact Woollaston Estates Holdings Limited which will hold the consent. If it is possible to withdraw or to cancel the consent and replace it with one in the correct name without necessitating further process it would be appreciated.

2. Consent Notice – condition 7

Condition 7 seeks to impose a consent notice which would prohibit both further subdivision of Lot 1, and any future application to do so. It contains an advice note that this condition was volunteered. Apparently it was volunteered by our surveyor after discussion with you, but without my knowledge. It would seem that he had misinterpreted a statement from me that we have no intention of subdividing the proposed Lot 1 as meaning that a consent notice to enforce that would have no adverse effect on our business. That is not the case for a number of reasons, including the following:

- Woollaston Estates Holdings Ltd has made a considerable investment in vineyards, winery and associated works in the last six years. On proposed Lot 1 alone this is approximately ten million dollars. The amortisation period for that investment is measured in decades, not years.
- To survive and succeed during that period requires maximum flexibility to deal with a constantly changing (and challenging) business and economic environment, including the ability to raise loans or capital when necessary. Our Mahana Vineyard and the winery on proposed Lot 1 are both at the core of our business – there is no question of separating their operations or disposing of either, but to say that they must forever remain on one title could conceivably restrict future options for the most efficient structure of the business (which currently consists of two related companies) and for raising capital in the future.

- For that reason it is not inconceivable that a consent notice as envisaged could one day affect the viability and therefore the survival of our vineyard and winery operation. It would be ironic if a measure intended to ensure that the land remains in economic horticultural production had the opposite effect.
- In addition, should a future opportunity arise to acquire adjoining land and undertake further amalgamation by way of boundary adjustment (which is more than "minor") we could be prevented from doing so by this condition.

The situation differs very little from that at our Kelling Road vineyard where the Council in 2002 permitted us a similar 'boundary adjustment' subdivision which created three substandard allotments (each with a house) and a 27ha vineyard allotment with no houses. On that occasion no condition relating to future subdivision was set, despite the fact that:

- Unlike the present situation, the proposed Kelling Road vineyard was not yet planted (Council accepted our word on that – which has been kept).
- The Kelling Road vineyard lot has no houses on it, therefore allowing additional houses 'as of right'. The proposed lot 1 has two staff houses already, presumably allowing Council control over any further residential building.
- The scale of investment already made in the current case (winery, vineyard, associated buildings, roading etc) is approximately ten times that which was considered an adequate disincentive to speculative subdivision at Kelling Road.

In granting the Kelling Road application with no substantive conditions the Council *"considered that the proposed boundary adjustment is not contrary to the policies and objectives of the Proposed Tasman Resource Management Plan"* and referred specifically to Policy 7.1.4 which seeks to *"facilitate amalgamation of land parcels where this allows a greater range of soil based production activities"*. We fully support that objective and have amalgamated a number of properties to date, in the process converting various uneconomic uses into viable vineyards which are well on their way to forming a successful export operation. We believe that the same reasoning applies to the current boundary adjustment proposal.

I am sorry about the confusion which has arisen. Having now seen the letter which was submitted with the application and which – unknown to me – made certain undertakings on behalf of Woollaston Estates Holdings Ltd, I can understand the way in which the consent has been drafted. However, as I have attempted to explain, I would find condition 7 difficult to accept. As the consent needs to be withdrawn and a new consent issued in the name of Woollaston Estates Holdings Limited, would it be possible to reconsider Condition 7 in light of the above?

I would be happy to call on you to further discuss the matter if you wish.

Yours sincerely



Philip Woollaston
CEO
Woollaston Estates Holdings Limited