

Report No:	REP12-04-01
File No:	RM120045, RM041406V1
Report Date:	10 April 2012
Decision Required	

Report to: Environment & Planning Subcommittee
Meeting Date: Friday, 20 April 2012
Subject: RM120045 and RM041406V1
Report Author: Pauline Webby, Consent Planner - Subdivision

1. SUMMARY OF PROPOSAL

Subdivision (RM120045)

This application seeks to subdivide a 30.7 hectare property into two allotments; one having an area of 23 hectares with the existing dwelling (Lot 1) the second having an area of 7 hectares and containing the existing vineyard/ cafe and productive land (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 QEII Trust protection of an open space covenant, a large area of extremely steep hillside currently with a mature pine tree crop. The balance of 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.

Section 127 change of condition (RM041406V1)

In conjunction with this subdivision proposal, application via section 127 of the RMA is being made to delete condition 9 of RM041406 which sought to prevent subdivision of the property for twenty years.

2. STATUS OF APPLICATION

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.

3. NOTIFICATION AND SUBMISSIONS

3.1 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 the decision-making panel must not have any regard to any effect on these parties. The location of these parties' properties is shown on the Map in Appendix 1.

3.2 Notification

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

3.3 Submissions

Submissions in opposition

Submitter	Reasons	Heard?
A L Brereton	Opposed in general to land fragmentation with multiple reasons given	Yes
I J and J M Thorn	Issues with access and volunteered covenants	Does not specify
A Bensemman	Future problems with shared accessway given proximity to sheds café and residence. Condition 9 should not be deleted, precedent if condition is overturned	No
E B Stevens	Opposed in general to land fragmentation with multiple reasons given.	No

Note: the submissions should be read in their entirety to fully understand the submitters' points; with the summary above not to be taken as a full account of reasons given.

These parties' properties are shown in Appendix 2.

3.4 Comments on Submissions

I J and J M Thorn - Submission 1

It is considered the conditions volunteered for Lot 1 are intended to be in perpetuity and would prohibit the construction of dwellings and or buildings in the areas identified. Right-of-way easements for access arrangements proposed are similar to others in rural areas and it is acknowledged there are often conflicts between users if not well managed further discussion is included under servicing.

A L Brereton - Submission 2

Concerns are expressed in relation: the deletion of condition 9 in relation to the removal of the no further subdivision for twenty years and the precedent that this may give rise to, fragmentation of a rural property, loss of privacy for his property and difficult access issues to the rear of Lot 1.

This submission is self explanatory and issues raised are addressed in the section 104 matters below and are not repeated here.

E Stevens - Submission 3

Concerns over shading of paddocks and multiple dwellings are addressed by volunteered conditions in perpetuity. This submission is otherwise self explanatory and issues raised are addressed in the section 104 matters below and are not repeated here.

A Bensemman - Submission 4

This submission is self explanatory and issues raised are addressed in the section 104 matters below and are not repeated here.

4. STATUTORY CONSIDERATIONS

Section 104

A decision on this application must be made under Section 104 of the Act. The matters for the Council to address are:

- Part 2 (Sections 5, 6, 7 and 8)
- Effects on the environment (positive and negative)
- Objectives and Policies of the TRMP
- Other matters

Section 106

According to Council records there are no known natural hazard issues on this site. This has been confirmed by Council's Resource Scientist (Rivers and Coast), Mr Eric Verstappen.

5. SECTIONS 6, 7 AND 8

The following matters are relevant to this application:

Other matters

- S.7(b) the efficient use and development of natural and physical resources.
- S.7(c) the maintenance and enhancement of amenity values.

Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

6. KEY ISSUES

The key issues are:

- Rural Character, landscape and amenity values
- Rural Land Productive Values
- Servicing (Includes access)
- Reverse Sensitivity
- Precedent
- RM041406 deletion of condition 9
- Queen Elizabeth II National Trust - Open Space Covenant (QEII Trust)
- Financial contributions/development contributions
- Archaeological

6.1 Rural Character, landscape and amenity values

Objective 5.1.3 *Avoidance, remedying or mitigation of adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resources.*

Policy 5.1.3.1 *To ensure that any adverse effects of subdivision and development on site amenity, natural and built heritage and landscape values, and contamination and natural hazard risks are avoided, remedied, or mitigated.*

Objective 5.2.2 *Maintenance and enhancement of amenity values on site and within communities throughout the District.*

Policy 5.2.3.1 *To maintain privacy in residential properties, and for rural dwelling sites.*

Objective 5.3.2 *Maintenance and enhancement of the special visual and aesthetic character of localities.*

Policy 5.3.3.2 *To maintain the open space value of rural areas.*

Objective 7.4.2 *Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities, including effects on rural character and amenity values.*

Policy 7.4.3.1 *To ensure that there is sufficient flexibility for a wide range of productive rural activities to take place, while avoiding, remedying or mitigating adverse effects.*

Objective 9.2.2 *Retention of the contribution rural landscapes make to the amenity values and the environmental qualities of the District, and the protection of those values from inappropriate subdivision and development.*

Policy 9.2.3.1 *To integrate consideration of rural landscape values into any evaluation of proposals for more intensive subdivision and development than the Plan permits.*

Policy 9.2.3.3 *To retain the rural characteristics of the landscape within rural areas.*

Policy 9.2.3.5 *To evaluate, and to avoid, remedy, or mitigate cumulative adverse effects of development on landscape values within rural areas.*

Subdivision Schedule matter 16.3.A (2) *The potential effects of the subdivision on the amenity values and natural and physical character of the area.*

Rural character is defined in the TRMP (Chapter 2) as:

"the character of the land as shown by the predominance of rural productive activities and includes:

- (a) a high ratio of open space to built features;*
- (b) large areas of pasture, crops, forestry, and land used for productive end;*
- (c) built features associated with productive rural land uses;*
- (d) low population density;*
- (e) predominant form of residential activity directly associated with a productive land use;*
- (f) social and economic activity associated with productive land use;*
- (g) cultural values associated with farming and living on the land."*

"Amenity values", as defined in Section 2 of the Resource Management Act 1991, is set out below:

"Amenity values means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes."

6.1.1 Rural Character, Landscape and Amenity Values Assessment

This proposal has taken into account the opinions and perspectives of adjoining neighbours' concerns by volunteering areas that will have buildings and dwellings prohibited in perpetuity. These areas are shown as A, B, C and D on Plan A attached and offer a substantive means of securing existing landscape and rural amenity values for this location. The outcome of this protection if accepted as part of any subdivision approval would ensure that the existing rural amenity values would not be altered by the presence of either future dwellings or farm buildings. Dwelling locations are limited to the existing dwelling site (Lot 1) and to an additional residential dwelling that would be attached to the existing café building and utilise part of this existing building not currently utilised by the cafe (Lot 2).

This can be viewed as a positive outcome in terms of maintaining an existing rural landscape uncluttered by buildings.

There are also volunteered limits on the planting of further vegetation in Area D which ensures that land owned by Mr Stevens (Submission 3) is not impacted by shading from mature trees in close proximity to boundaries which can limit productive capacity of adjoining land. It is accepted that this volunteered covenant is practical protection for the adjoining land and owner.

The café has existing consent approval in this location and this subdivision proposal is consistent with that consent in that all of the winery activity and supporting area for growing grapes is contained within Lot 2. Objective 7.2.2 and associated policies support the “*use of rural land for activities other than soil-based production, including papakainga, tourist services*” especially where it supports the maintenance of productive values. The café/winery in the Motueka valley has provided another means of adding value to soil based production and added to a diversity of activities in the local community and provided an attraction for visitors to the area on a well used tourist route.

It is considered that this proposal would have a limited effect if any on the existing rural amenity values and characteristics. This proposal offers stronger controls on dwelling locations and accessory buildings than is currently available under the permitted Rural 2 rules of the TRMP.

6.2 Rural Land Productive Values

Management Plan (TRMP) as:

“in relation to land, means land which has the following features:

- (a) flat to gently rolling topography;*
- (b) free-draining, moderately deep to deep soils;*
- (c) moderate to good inherent soil fertility and structure;*
- (d) a climate with sufficient ground temperature, sunshine, available moisture, and calmness to make the land favourable for producing a wide range of types of plants.”*

Objective 7.1.2 *Avoid the loss of potential for all land of existing and potential productive value to meet the needs of future generations, particularly land of high productive value.*

Policy 7.1.3.1 *To avoid, remedy or mitigate the adverse effects of subdivision of rural land, particularly land of high productive value.*

Policy 7.1.3.2 *To avoid, remedy or mitigate the effects of activities which reduce the area of land available for soil-based production purposes in rural areas.*

Policy 7.1.3.3 *To avoid, remedy or mitigate adverse actual, potential, and cumulative effects on the rural land resource.*

Objective 7.2.2 *Provision of opportunities to use rural land for activities other than soil-based production, including papakainga, tourist services, rural residential and rural industrial activities in restricted locations, while avoiding the loss of land of high productive value.*

Policy 7.2.3.2 *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;*

Objective 7.4.2 *Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities, including effects on rural character and amenity values.*

Policy 7.4.3.1 *To ensure that there is sufficient flexibility for a wide range of productive rural activities to take place, while avoiding, remedying or mitigating adverse effects.*

Policy 7.4.3.6 *To ensure that adequate physical or spatial buffers or other techniques are applied when allowing new allotments or buildings primarily or exclusively for residential purposes in rural areas, so that productive land use opportunities are not compromised.*

Subdivision Schedule matter 16.3.A (1) *The productive value of the land in Rural 1, Rural 2 and Rural 3 zones, and the extent to which the proposed subdivision will adversely affect it and its potential availability.*

6.2.1 Rural Land Productive Values Assessment

An assessment of the properties productive land values has been included with the application. The report is by John Bealing, Agfirst This report confirms that the subdivision is constructive in terms of conserving productive land values and Council's Resource Scientist (Land) has reviewed this report and confirms that he agrees with the report. He states in email advice dated January 31 2012, "*with relation to land productivity the John Bealing assessment and assessment of effects are sound.*"

The report and the TRMP productive soil areas show that Lot 2 predominantly includes the productive Class A soils which are normally more in line with those soils encompassed in Rural 1 land. Lot 1 holds the balance of the land having Class E soils. The subdivision proposal is considered to hold together the productive areas of the property with Class A soils.

Therefore it is considered that this proposal does not contribute to the reduction or fragmentation of productive land values. Submitters have expressed concerns over the fragmentation of rural land and disagree with the above report.

6.3 Servicing and Access

Objective 7.4.2 *“Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities, including effects on rural character and amenity values.”*

Policy 7.4.3.9 *“To avoid, remedy or mitigate servicing effects of rural subdivision and development, including road access, water availability and wastewater disposal*

Subdivision Schedule matters 16.3A relating to servicing.

8A) *For water supply, the extent of compliance with the “Drinking Water Standards for New Zealand 1995” or any subsequent replacement of this standard.*

(10) *Where wastewater disposal will occur within the net area of the allotment, the extent to which the site and soil assessment, design and construction of the system complies with the AS/NZS 1547; 2000, taking into account the requirements of rules in Chapter 36 regulating the discharge of wastewater.*

(11) *The adequate provision of potable water and water for fire fighting.*

6.3.1 Servicing Assessment

Both the existing café and the dwelling are fully serviced for water, wastewater, stormwater, power and telephone and no changes are proposed.

The original reports show that the new dwelling was serviced by an aerated Septech tank and the café by the original anaerobic septic tank and discharge field with some minor upgrades of biofilters would be sufficient along with a new grey water system.

At the time of any new extension of a dwelling onto the café building would need to show that existing systems would have sufficient capacity or provide new discharge services. The proposed Lot 1 has sufficient area to support additional discharge of wastewater and stormwater.

The café consent (RM041406) and commencement required a substantial upgrade of the access to the property from the Motueka Valley road. Council’s Engineers have confirmed they have no concerns with an additional dwelling being serviced from this existing access point.

The proposed access leg and right-of-way area will have a legal width of 6 metres but the formation is less than the standards specified in the TRMP and is longer than 200 metres. The applicants have volunteered passing bays be constructed at 100 metre intervals by widening to 5.5 metres and asked that the existing formation be otherwise accepted. The generally clear line of sight along the rights-of-way, limited users (two only) and wide grass areas predominantly either side is considered to mitigate any adverse effects rising from the lower formation standard.

The access/right-of-way that passes both existing farm sheds and the Café building on Lot 2 has a reasonable space either side providing separation for a rural working space and privacy for any dwelling. This access arrangement is similar to many others in the district and minimises the loss of land to access formations. It is acknowledged that submitters' concerns and opinions over issues that arise on rights-of-way is a valid consideration. However the TRMP contemplates shared access ways and the legal governance of easements over rights-of-way is provided by the Property Law Act.

The café outlook remains unchanged. For the balance of the legin access to the existing dwelling on Lot 1 there will only be a single user and the TRMP states the following with regards to the TRMP figure 16.2 - Access formation standards:

- (ii) *this requirement does not apply in the Rural 1 or 2 zones to any part of an access extending:*
- *more than 50 metres from the road boundary and serving a single site or a set of sites under single ownership and having a single occupier; or*
 - *beyond that part of the access that is common to more than one owner or occupier whether the access serves more than one site in separate ownership or a single site with multiple occupiers.*

Therefore while the single user access road to the dwelling on Lot 1 appears narrow as it passes the small dam there is sufficient space for future owners to widen for their own aesthetics and practical requirements should they want to. The TRMP does not specify minimum standards after the first 50 metres and in this instance the access is an existing formation.

Access to the rear of Lot 1 would be by an existing farm track over the hill between the pines on the west boundary and the open space covenant. It is noted that this access may need future upgrading to be more functional. Access to power lines on Lot 1 will be changed by this subdivision.

6.4 Reverse Sensitivity Effects

Subdivision Schedule matter 16.3A (9) *The relationship of the proposed allotments with the pattern of adjoining subdivision, land use activities and access arrangements, in terms of future potential cross-boundary effects.*

6.4.1 Reverse Sensitivity Assessment

This proposal does not create any additional potential for reverse sensitivity as both Lots 1 and 2 remain larger rural allotments with dwellings sited well away from other rural boundaries.

For those adjoining property owners who have provided their written approvals no further consideration has been given to potential reverse sensitivity effects on them.

6.5 Precedent

Case law has established that the granting of consent for one application (like for like) may well have an influence on how another application should be dealt with.

Of concern is the deletion of a volunteered condition 9 RM041406 that prevented subdivision for a period of twenty years from the commencement of RM041406 (31 March 2005). The discussion in section 6.6 below sets out reasoning for any potential acceptance of the deletion. This is considered to set this condition apart from those volunteered conditions set in perpetuity for reasoning articulated in a TRMP and / or resource management context and especially in no further subdivision in perpetuity conditions were part of any decision for Lots 1 and 2.

This subdivision proposal is considered distinguished from other Rural 2 proposals by two factors:

- (a) The volunteering of areas to be protected in perpetuity from future dwellings and buildings.
- (b) The allotments reflect the productive characteristics of the soil and topography therefore conserving productive land.

6.6 RM041406 Deletion of Condition 9

Condition 9 of RM041406 included a covenant that limited further subdivision for a period of twenty years from the commencement of this consent. This application seeks to delete this condition as it is an impediment to the current application to subdivide.

In researching the basis for this covenant in both the original application and decision for RM041406 it was ascertained that apart from being volunteered by the applicant, the reasoning for its inclusion and the limited term were not articulated. Rationalisation in resource management terms or TRMP objectives and policies were also not expressed. RM041406 sought to establish a winery, café and new dwelling on the property and the notified decision that granted this did not allow any second dwellings on the property. Second dwellings are often the reason for the justification of “no further subdivision” conditions. These conditions are usually made in perpetuity and not for a limited period of time such as set out in condition 9.

It is my opinion that this condition may have limited merit in this circumstance especially where it is seven years into a twenty year term. This condition does not offer ongoing protection from future subdivision.

An alternative would be to replace condition 9 with a consent notice prohibiting further subdivision in perpetuity for both Lots 1 and 2; conditions have been included although these have not been volunteered.

The current proposal to subdivide has provided reasoning for subdivision in terms of productive values and offered volunteered conditions in perpetuity that are justifiable in terms of conserving rural amenity values and characteristics; protecting the landscape values of Lot 1 when viewed from surrounding land, adjoining neighbours and the Motueka Valley Road.

Submitters 2, 3 and 4 all express concern over the precedent effect that may arise if this condition was deleted.

It has been noted in the submissions received and from the onsite visit that there may be areas of non compliance with the TRMP rules and the conditions of RM041406. These have been brought to the attention of Council compliance staff.

6.7 Queen Elizabeth II Trust/Open Space Covenant

This proposal does not alter the QEII open space covenant which will remain on Lot 1. The open space covenant dated 6 day of January 1992 listed in its first schedule the following open space objectives:

“to protect and maintain open space values of the land, to protect native flora and fauna on the land; and to protect natural scenic values of the land especially as seen from SH 61(now Motueka Valley Road).

In answer to issues raised in submission 3, this open space covenant does not make provision for public access other than allow owners to give their permission for members of the public to access the area if they choose to (see condition 9 of schedule 2). It is acknowledged that there may be matters under schedule 2 of the covenant that are not being managed at this time. However this is not a matter that Council has control over and the QEII Trust should be approached with any management issues and or concerns.

The volunteered areas to be protected from construction of buildings and structures adjoin this open space area and the prominent ridgeline to the west of the Green Hill road community. This ridgeline also forms a foreground landscape when viewed from the Motueka Valley Road when approaching Ngatimoti from the South and it is this view that submitters (Mr and Mrs Thorn) seek to protect in terms of their property's rural amenity values.

The volunteered conditions are considered to add value to the existing open space covenant's objectives and give support to their intent to protect the scenic values of this hill area and ridgeline for the Green Hill Road residents, the surrounding rural community and the wider public travelling along the Motueka Valley Road. This effectively prevents cluttering of the landscape with buildings and confines them to the existing building locations (Lot 1- the dwelling, Lot 2 the café and farm sheds).

6.8 Financial Contributions/Development Contributions

There is one additional allotment being created where there will be an additional ability for a dwelling in addition to the café/winery. This will trigger the requirement for a payment of both financial and development contributions on a single allotment (Lot 2 and new dwelling).

6.9 Archaeological

Council records indicate a Cultural heritage site N27/025 on proposed Lot 2. It was noted from the archaeological report submitted with the application for RM041406 that disturbance of the known archaeological sites by this activity would be unlikely. The current proposal does not propose any land disturbance activities and a consent

notice alerting future owners of the process should any archaeological material be discovered has been included as a condition of consent.

7. SUMMARY OF KEY ISSUES

- 7.1 Council's Resource Scientist (Land) confirmed support for the land productivity report from Mr Bealing (Agfirst) and considers that the subdivision is not contrary to the objectives and policies of the TRMP in terms of productive values.
- 7.2 The proposed dwelling for Lot 2 would be an extension of the existing café building. This avoids creating a separate built residential environment away from the existing cluster of buildings. It is considered there is minimal change to the rural amenity in terms of dwelling locations.
- 7.3 There are some positive benefits in terms of conserving the landscape and scenic values surrounding the QEII open space covenant area with the surrounding area having volunteered restrictions in terms of new buildings. These support one of the objectives of the original covenant which sought to "*protect natural scenic values of the land especially as seen from SH 61.*"
- 7.4 Both allotments have existing servicing suitable for the existing dwelling (Lot 1) and café with some upgrade or renewal of wastewater systems for new dwelling/café extension on Lot 2.
- 7.5 There is an existing high standard access point onto the Motueka Valley Road that is suitable for providing access to another dwelling. The café access and parking is set apart from the right-of-way to the residential dwellings. The existing access to dwelling on Lot 1 is formed and adequate albeit narrow in places. Access to the rear of Lot 1 may require future upgrade.
- 7.6 Condition 9 of RM041406 was a covenant volunteered by the applicant. Issues of precedent are factor with this deletion and replacement by no further subdivision in perpetuity on Lots 1 and 2 would provide stronger protection than offered by the original condition.

8. SECTION 5 AND RECOMMENDATION

Recommend grant

As a planner weighing up all of the relevant considerations in terms of Section 5 of the Act, I consider that a grant of consent **would** promote the sustainable management of natural and physical resources and, on balance, I **RECOMMEND** that the application(s) be **GRANTED**, subject to conditions.

9. CONDITIONS, ADVICE NOTES, PLANS

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.

Easements

2. 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.
3. 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.
4. The survey plan that is submitted for the purposes of Section 223 of the Act shall include reference to easements.

Financial Contributions

5. 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

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

Land Information New Zealand reference: to be advised.

Right-of-way Formation

7. 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.

Advice Note

The application volunteered every 100 metres, however the standard specified in the TRMP chapter 16 rules is considered more appropriate.

Consent Notices (Lots 1 and 2)

8. The following consent notices shall be registered on the certificate of title for Lots 1 and 2 DPXXX pursuant to Section 221 of the Resource Management Act.
- (a) The construction of any buildings or structures within that part of Lot 1 shown as area A on survey plan is prohibited in perpetuity.
 - (b) The construction of any buildings or structures 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 Lot 1 is limited to the 2500 m² residential curtilage area around the existing dwelling.
 - (f) The building location area for Lot 2 is limited to a 2500 m² 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) Subdivision of Lots 1 and 2 DPXXX is prohibited in perpetuity.

Archaeological (Lots 1 and 2)

- (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.

Advice Note

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.

RM041406V1 (Deletion of Condition 9.1.1.3)

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 m² 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 m²) otherwise car parking for the winery shall be 1 car park for every 50 m² 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 m² 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 m² 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.

9. Covenant

9.1 Prior to any building consent being issued for the proposed new dwelling a covenant under Section 108 of the Resource Management Act 1991 shall be entered into and registered against the certificate of title for the land on which the winery building apartment dwelling is to be located. The covenant must state that:

9.1.1 that the original dwelling is to be used for the winery café/tasting area only, being ancillary to the viticulture and wine processing use of this land and shall not be used for any residential activity once the new replacement dwelling is completed;

9.1.2 that if the original dwelling either is not used or ceases to be used other than for winery café/tasting area it shall be altered to provide only for non-residential purposes, such work being at no cost to the Council;

9.1.3 Deleted (Decision RM120045 and RM041406V1)

~~the property in shall not be subdivided other than to provide for a boundary adjustment within any period commencing from the date of the Resource Consent being given effect to until 20 years following that date.~~

9.2 The covenant shall be entered into pursuant to section 108(2)(d) of the Act and shall be registered against the title pursuant to section 109 of the Act. All cost incurred in preparing and registering the covenant shall be paid for by the consent holder.

Advisory Notes: These conditions have been voluntarily agreed to by the applicants. It does not preclude the temporary use of the existing dwelling whilst the replacement dwelling is being constructed; however the use of the existing dwelling for residential purposes shall cease once the replacement dwelling is occupied.

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.

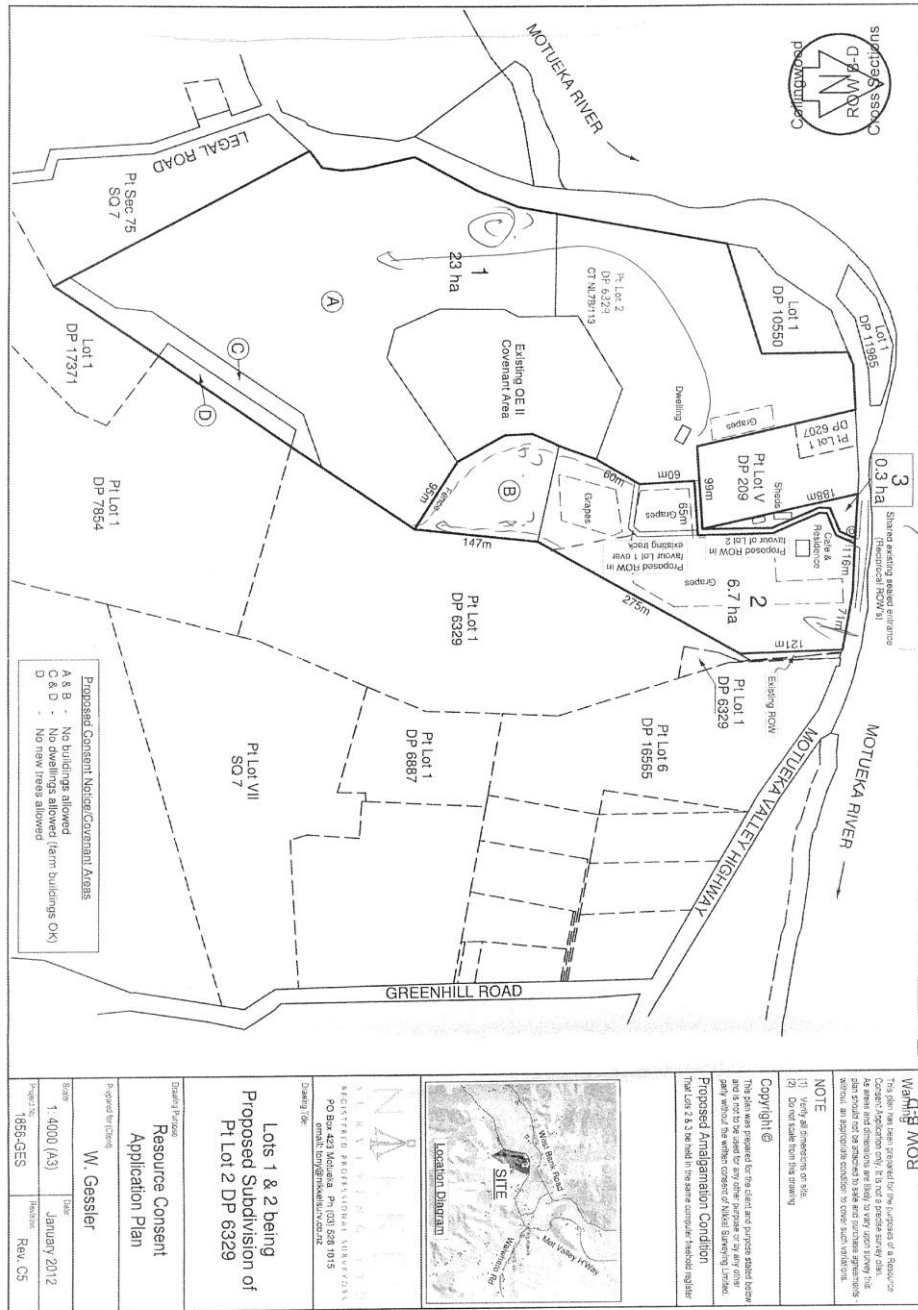
11.3 The particular issues, which Council will consider in its review, would be in regards to:

- 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.



Pauline Webby
Consent Planner - Subdivision

Plan A

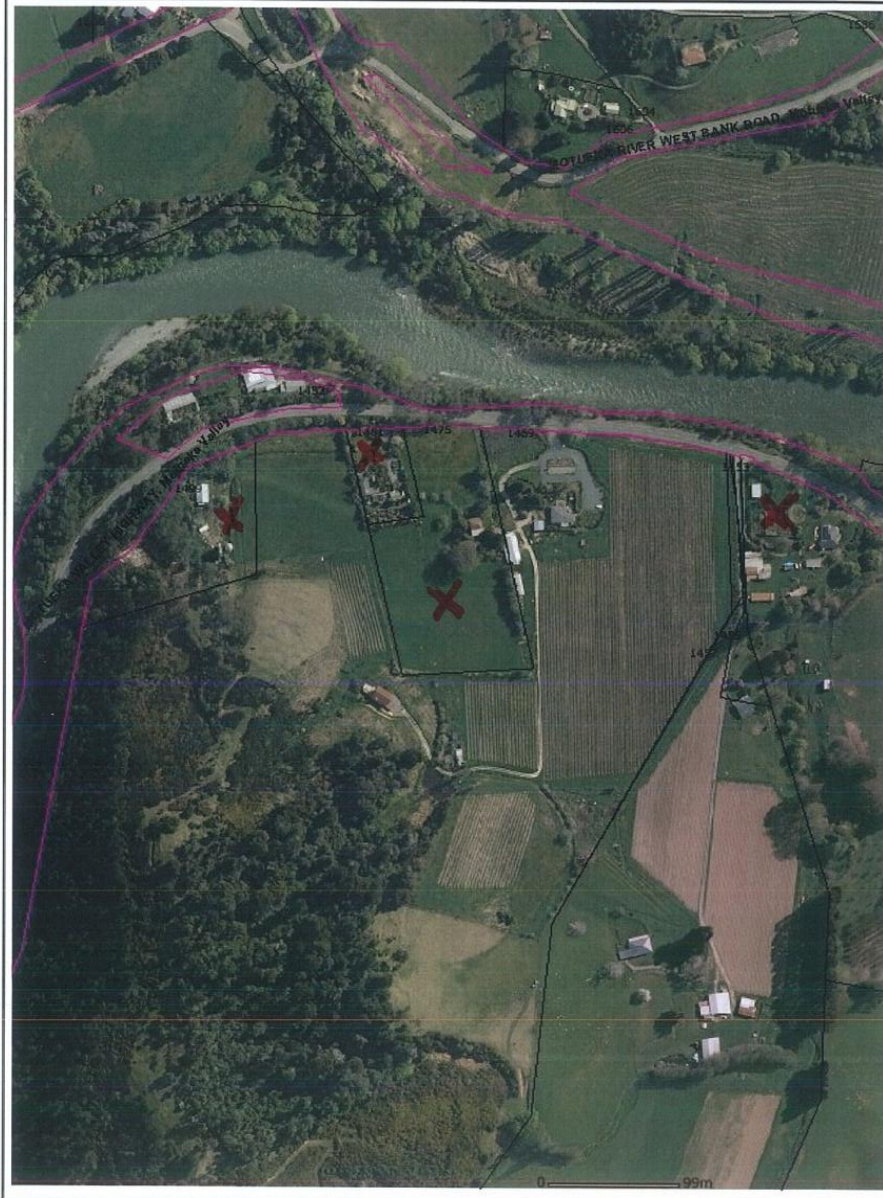


Appendix 1
Location of those parties who have provided written approvals

Map Output

Page 1 of 2

X LOCATION OF PARTIES WHO HAVE PROVIDED written Approva



ExploreTasmanMap

10/4/2012 **DISCLAIMER:**

This map is derived from ExploreTasman and has generally been compiled from data generated by and supplied to the Tasman DC. It has no legal status and is known to be incomplete. To ascertain the exact location of any item, Tasman DC advises that the customer arrange onsite verification. Tasman DC will not be liable for any damages or loss whatsoever suffered from the use of this information.

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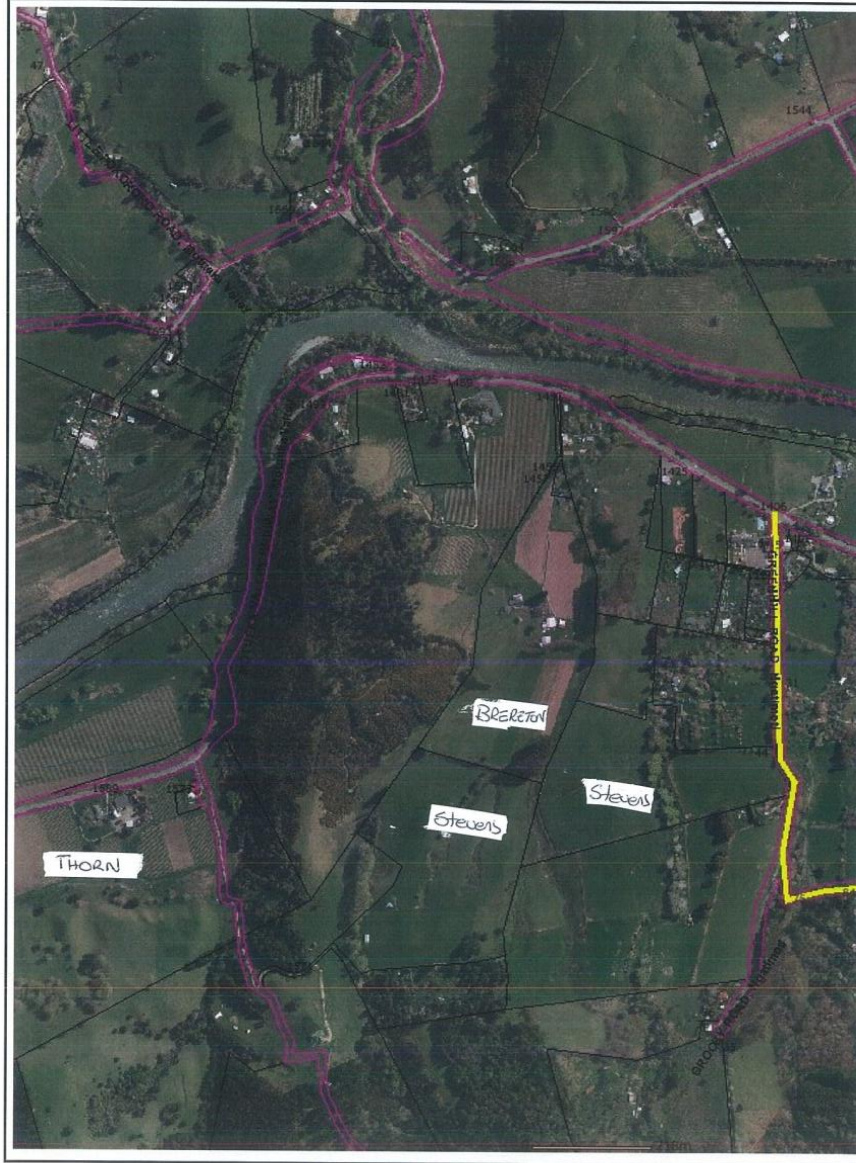
Appendix 2
Location of those parties submitting in opposition

Map Output

App. 1

Page 1 of 2

* location of Submitters that are adjoining



ExploreTasmanMap

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