

# MINUTES

**TITLE:** Environment & Planning Subcommittee  
**DATE:** Monday, 10 September 2007  
**TIME:** 9.40 am  
**VENUE:** Council Chamber, 189 Queen Street, Richmond

**PRESENT:** Cr E M O'Regan (Chair), Crs R G Kempthorne and N Riley

**IN ATTENDANCE:** Principal Consents Planner (R Askew), Co-Ordinator Subdivision Consents (M D Morris), Development Engineer (D Ley), Administration Officer (B D Moore)

## 1. APPLICATION NO. RM070215 – WOOLLASTON ESTATES LTD, OLD COACH ROAD, MAHANA

### 1.1 Presentation of Objection

Mr PTE Woollaston, CEO of Woollaston Estates Holdings Ltd spoke to his objection letter of 26 July 2007 seeking that:

1. That the consent be amended to identify the applicant / consent holder as Woollaston Estates Holdings Ltd. In addition, the applicant sought deletion of Condition 7 or its amendment. Condition 7 required a consent notice to be prepared and imposed on Lot 1 to prohibit 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.

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 at 1.00 pm

### RESOLUTION TO EXCLUDE THE PUBLIC

**Moved Crs Riley / Kempthorne  
EP07/09/07**

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

Woollaston Estates Ltd

**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
Woollaston Estates Ltd	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

**Moved Crs O'Regan / Kempthorne  
EP07/09/08**

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

**2. APPLICATION NO. RM070215 – WOOLLASTON ESTATES LTD, OLD COACH ROAD, MAHANA**

**Moved Crs Kempthorne / O'Regan  
EP07/09/09**

**THAT pursuant to Section 104B of the Resource Management Act, the Committee DECLINES in part and UPHOLDS in part consent to Woollaston Estates Ltd as detailed in the following report and decision.  
CARRIED**

**Report and Decision of the Tasman District Council  
through its Hearings Committee Meeting  
held in the Council Chambers, Richmond  
on  
Monday, 10 September 2007, commencing at 9.30 am**

A Hearings Committee ("the Committee") of the Tasman District Council was convened to hear the objection lodged by **Philip Woollaston on behalf of Woollaston Estates Holdings Ltd** relating to conditions of a subdivision consent issued under delegated authority on 5 June 2007. The objection, made in accordance with Section 357A of the Resource Management Act 1991 ("the Act"), was lodged with the Tasman District Council on 27 July 2007 and refers to resource consent RM070215.

**PRESENT:** **Hearings Committee**  
Cr O'Regan, Chairperson  
Cr Kempthorne  
Cr Riley

**APPLICANT:** Philip T E Woollaston (on behalf of Woollaston Estates Holdings Ltd)  
Graham Allan, Solicitor, on behalf of Woollaston Estates Holdings Ltd.

**CONSENT AUTHORITY:**      **Tasman District Council**  
Consents Coordinator - Subdivisions (M Morris)

**IN ATTENDANCE:**            Principal Resource Consents Adviser (R Askew),  
Administration Officer (B D Moore)

## **1. BACKGROUND OF CONSENT AND CONDITIONS**

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 Philip 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.

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)

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 m<sup>2</sup> and 655 m<sup>2</sup> to vest as road, to ensure that all parts of the adjoining Old Coach Road formation and footpath are contained within road reserve.

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.

The opportunity for an additional title was a potential adverse effect relating to the fragmentation of productive rural land that the District Plan seeks to avoid.

In the case of this subdivision, the application also including the volunteering of a covenant preventing further subdivision of Lot 1:

*"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 and winery. Notwithstanding this the applicant would be prepared to volunteer a covenant against further subdivision of proposed Lot 1 if needed."*

On the basis of the volunteered covenant preventing further subdivision of Lot 1, Council staff were satisfied that adverse effects in terms of on-going fragmentation of productive land had been mitigated.

The consent was issued on 4 July 2007 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.”*

The subdivision is a Discretionary Activity.

## **2. THE OBJECTION**

On 26 July 2007 the Council received an objection from Mr Philip Woollaston objecting to the imposition of the Condition 7 and requesting its deletion. This objection was deemed to have been made pursuant to Section 357A of the Act which provides for objection to conditions contained in a decision issued by Council staff under delegated authority.

The letter of objection also clarified the correct identifier of the applicant being Woollaston Estates Holdings Ltd rather than Philip T E Woollaston.

## **3. REASONS FOR THE OBJECTION**

- **That Condition 7 affects the title of the Company’s most significant asset and in doing so 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.

## **4. PROCEDURAL MATTERS**

No Procedural matters were raised.

## **5. EVIDENCE HEARD**

The Committee heard evidence from the applicant / objector and the Council’s reporting officers. The following is a summary of the evidence heard at the hearing.

## 5.1 Applicant's Evidence

Mr Woollaston acknowledged that the Council's planning officer, Mr Morris, had acted in good faith through the imposition of this condition within the consent issued under delegated authority granted on 4 July 2007.

Mr Woollaston acknowledged that his surveyor's application letter of 16 March 2007 volunteered a covenant against further subdivision of proposed Lot 1 if needed. The consent granted on 4 July 2007 under delegated authority by Mr Morris contained an advice note that this condition (Condition 7) had been volunteered by the applicant. In this letter of 26 July 2007, Mr Woollaston noted that the deadline to lodge a formal objection was 27 July 2007 and at that time had been unable to take advice or assemble detailed evidence in support of his objection. Mr Woollaston said he had been unable to check the surveyor's original application of 16 March 2007 before this was lodged with the Council.

Mr Woollaston stated reasons for the deletion of Condition 7 saying that this affects the title to the company's most significant asset. He said in doing so, it is likely to:

1. Negatively affect the company's valuation;
2. Potentially inhibit the company's ability to raise capital necessary to continue its expansion towards full production and profitability;
3. Restrict future options available to the efficient organisation of the company's business.

Mr Woollaston described the history of the company on the site and how it had amalgamated land and made a substantial financial investment both the vineyard and the buildings.

Mr Woollaston said it was ironical that proposed Condition 7 would potentially prohibit the further expansion of the company by acquiring land on neighbouring properties to amalgamate with the subject site.

Mr Woollaston stated that the wording of the Consent Notice which stated that future subdivision would be 'prohibited' raised concerns with shareholders in the company and detract from investor confidence.

Mr G Allen, Solicitor of Pitt & Moore, tabled and read some notes in support of the applicant's objection. Mr Allen said that the applicant accepted the situation is of the applicant's agent's making and accepted the Council officer's position and good faith on the part of the Council. He accepted the Council officer's view that the applicant needs "to start again" however, that will mean time and cost for both the applicant and the Council. He said that the applicant requested this hearing to ask the Council to consider another option and that option is to make further subdivision not prohibited, but discretionary. He said that the applicant suggested that this would give the Council the opportunity to consider the matter on its merits and the circumstances at the time. Mr Allen acknowledged that any application by the applicant for further subdivision may never occur, or may be many years away.

Mr Allen explained the unique features of the applicant's situation, including:

1. Very high capital investment in the winery;
2. Flexibility needed to ensure optimum use of the facility;
3. Flexibility in the event of acquiring adjoining land;
4. Only fragmentation if further subdivision is "as of right", i.e. Controlled – which could be solved by making further subdivision discretionary;
5. Section 104 has a specific provision that the consent authority (Council) may consider any other matter relevant and reasonably necessary, to determine the application.

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

Co-Ordinator Subdivision Consents, Mr M D Morris, spoke to his report EP07/09/04 contained within the agenda. He said he believe that the proposed Condition 7 should remain and that there are important precedent issues for volunteered conditions if the applicant can simply seek the removal of a condition as soon as the consent has issued.

Mr Morris acknowledged that there is an opportunity to have a consent notice variation in the future and explained that he had to try and prevent fragmentation of rural productive land. He said he had proceeded with the application on a volunteered, non-notified basis and he wished to ensure that the integrity of the process is maintained, he said he believed the consent notice was very much part of the overall decision.

Mr Morris said that he did not think that the consent notice would stop a boundary adjustment to obtain neighbouring land for further production. Mr Morris said that the applicant has the right to make an application in the future pursuant to Section 221(3) to apply to vary a consent notice.

## **5.3 Right of Reply**

Solicitor Mr G Allen responded for the applicant saying that the applicant believed that should the Council apply a discretionary notation to the title by way of covenant this would mean more flexibility for the Council and that the subject application could be considered as part of the supporting record.

Mr Woollaston added that he not only has to manage the company as the Chief Executive Officer, but is also required to satisfy the shareholders to show that positive future development can occur.

Mr Allen said that he did not believe that the subject prohibition would apply to the balance land, but the subdivision prohibition represents a negative effect on the land value assessment.

## 6. DECISION

Pursuant to Section 357D of the Act, the Committee **DECLINES** the objection to delete Condition 7 but **UPHOLDS IN PART** the objection (as amended at the hearing) to change the wording of Condition 7 to remove the reference to prohibition of subdivision as set out below.

### Condition 7

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

*No further subdivision of Lot 1 shall be allowed.*

*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

*For the purposes of this Condition the term ‘subdivision’ does not include minor boundary adjustments and/or amalgamation of adjoining land where no additional titles are being sought.”*

## 7. REASONS FOR THE DECISION

In relation to the issues raised in the objection, the Committee considered as follows:

### Background and Principal Issues

- a) That the proposed subdivision was to relocate boundaries of three adjoining titles so as to provide one rural residential sized title for each of the dwellings of Messrs Woollaston and Schaeffer (principal shareholders of Woollaston Estates Holdings Ltd) leaving a balance 34.5 hectare Proposed Lot containing the vineyard, winery and two workers dwellings.
- b) The proposal left open an opportunity to further subdivide Proposed Lot 1 which having an area of 34.5 hectares could be subdivided as a Controlled Activity which must be approved by Council subject to matters over which it has reserved control in the Tasman Resource Management Plan.
- c) In the application however, the applicant’s surveyor, on behalf of the applicant volunteered that a covenant against further subdivision of Proposed Lot 1 be imposed.
- d) That volunteered condition has resulted in the inclusion of Condition 7 of the Consent, the purpose of such condition being to prevent any future subdivision of Proposed Lot 1 as a Controlled Activity.
- e) The applicant has now advised that his surveyor was not instructed to offer any such voluntary condition and therefore has objected to the imposition of Condition 7.

## **Matters Raised**

- a) The applicant has raised a number of reasons both in his objection and at the hearing as to why he considers that Condition 7 is unreasonable.
- b) The applicant's legal adviser has requested that in lieu of deletion of Condition 7 that the wording of the Condition be changed to provide that any further subdivision would not be prohibited but discretionary.
- c) The Committee notes that Condition 7 provides that, "*any further subdivision of Lot 1 that creates additional titles or any application being made to subdivide lot 1, shall be prohibited*". Council also notes that the term 'prohibited' in Condition 7 may be misconstrued in that the term 'prohibited activity' is defined in the Act and which pursuant to Section 77B(7) provides that where an activity is described in the Act, regulations or plan as a prohibited activity, that no application may be made for that activity and a resource consent must not be granted for the activity.
- c) The Committee noted that the provisions under Section 221(3) of the Resource management Act do afford the consent holder an opportunity to apply to the Council to vary or cancel the Consent Notice with the decision of such application being at the Council's discretion.
- d) Rewording Condition 7 to remove the word 'prohibited' would provide the relief sought by the applicant; that is to provide for the possibility of future subdivision through variation/cancellation of the Consent Notice at Council's discretion, whilst maintaining the inhibition on future subdivision that the Condition provides for.

## **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 these changes to the conditions achieves the purpose of the Act as presented in Section 5.

## **Relevant Statutory Provisions**

In considering this application, the Council has had regard to the relevant provisions of the following planning documents:

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

How the activity relates to the objectives and policies contained within the TRPS and PTRMP were covered in the original decision. It is considered that the changes being sought by the Objector do not change these considerations.

## **Comment on Legal Matters Raised**

It was noted that a Consent Notice issued pursuant to Section 221(3) provides for variation or cancellation of the condition and that since the amendment to the Act in 2005 the variation or cancellation must follow a process similar to that for application and determination for resource consent.

Thus any variation or cancellation of Condition 7 would be at the Councils' discretion should any change of circumstances warrant that the Condition be so reviewed.

Issued this 12<sup>th</sup> day of September 2007

Councillor O'Regan  
**Chair of Hearings Committee**

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**Date Confirmed:**

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**Chair:**