

GUARDIANSHIP AND ADMINISTRATION BOARD  
Devonport Community Health Services Centre

Mrs E.O.C. on the review application of Mr H.N.

GAB No. XXXX

**REASONS FOR DECISION**

Leon Peck (Chair)  
Melanie Bartlett (Board member)  
Wendy Beveridge (Board member)

Date: 00/00/2007

Administration – review of appointment - professional administrator intending to sell represented person's property - alternative plan to retain the property proposed by represented person's family members – represented person's wishes  
*Guardianship and Administration Act 1995* (Tas), ss 6, 54, 56 and 67

1. This is an application under section 67 of the *Guardianship and Administration Act 1995* ('the Act') for the review of an administration order.
2. The represented person is Mrs E.O.C. of Northern Tasmania. Mrs E.O.C. was involved in a Motor Vehicle Accident on the 27<sup>th</sup> March 1998. As a result of the accident Mrs E.O.C. has an acquired brain injury.
3. On the 14<sup>th</sup> July 1999, pursuant to section 51 (5) of the Act the Guardianship and Administration Board ('the Board') made an order appointing her daughter, Mrs T.M.M., as administrator for 3 years. At the triennial review of the Order on 5<sup>th</sup> July, 2002 the Board appointed the Public Trustee as the administrator in place of Mrs T.M.M. The change resulted from Mrs E.O.C. being awarded a damages amount of \$280,000 under a court order with those funds paid to the Public Trustee. Mrs E.O.C. and Mrs T.M.M. decided it would be best if all the funds were under the control of the Public Trustee.

4. At a review hearing on the 24<sup>th</sup> June, 2005 the Board decided that the administration order should be renewed for a further three years with the Public Trustee to continue as the administrator.
5. An Application for Review dated 16<sup>th</sup> February 2007 was received by the Board from the Represented Person's son, Mr H.N., together with a submission from him on the 27<sup>th</sup> February, 2007.
6. In August 2006 the Public Trustee was advised of the death of Mrs X.M.K., mother of Mrs E.O.C.. Mrs E.O.C. had a residuary entitlement in the estate of I.X.I in which Mrs X.M.K. had a life interest. Mrs E.O.C. was entitled to one half of the following properties, her brother, Mr W.D. being entitled to the other half:

- (a) "A" property
- (b) "B" property
- (c) "C" property
- (d) "D" property
- (e) "E" property

7. In addition, a share of Mrs X.M.K.'s remaining property was left to her daughter (Mrs E.O.C.) along with a one third share of the cattle that was running on the properties (on the 30<sup>th</sup> January 2007 this numbered 513, valued at \$189,000).
8. In January 2007 Mr H.N. proposed that he purchase the cattle on terms until 2009 and lease his mothers land at a price to be determined. He also advised the Public Trustee that his mother wished to move into the family home located on the "B" Property.
9. The Public Trustees views regarding Mr H.N.'s proposal were:
  - There are obvious high risk levels in owning livestock. They said they were not in a position to control those risks and divestment should occur.

- The proposal for another party to lease the farm and to in turn pay 90% of the farm income is not acceptable from an investment risk perspective.
  - The Public Trustee should proceed to dispose of the farming interest to the other beneficiary or on the open market.
10. The response from the Public Trustee concerned members of Mrs E.O.C. family, namely her daughters, Mrs T.M.M. and Ms T.N. and her son, Mr H.N.. That concern resulted in the application for review of the administration order.
11. Mr H.N. stated in his application:
- “What has upset and offended our family is that the Public Trustee has arbitrarily decided to sell Mum’s property without even consulting her, not once visiting the properties to gain a full understanding of the potential impact the decision would have on her, or meeting family members to discuss this course of action. Furthermore, the Public Trustee has failed to provide evidence of how their proposed course of action is in Mum’s best interest financially, emotionally, mentally and socially. We argue that it is not appropriate for our mother’s assets to be analysed in a strictly financial sense, without concern for her emotional well being and happiness. Her well-being is very much determined by her sense of place, her history and by her family’s heritage within the community.”
12. The review hearing was conducted at the Devonport Community and Health Services Centre on Friday 13<sup>th</sup> April 2007. The hearing initially took place before Board members, Leon Peck (Chairman), Wendy Beveridge and Mary Davies.
13. The following documentation was considered by the Board:
- Administration Oder 24/06/2005 and decision documents.
  - Health Care Professional Report, Dr. E Rahel, 9/02/2007.
  - A report dated 4/07/2002 from Consultant Physician, Dr Andrew Maclaine-Cross together with earlier reports from Dr. Maclaine-Cross (July 1999 x 2) and James Drury, July 1999.
  - Application for Review from Mr H.N. together with a submission from him in relation to the properties and a copy of a submission put to the Public Trustee on 16/02/2007,

- Submission from Mrs E.O.C. aunt, N.M.M. dated 26/02/2007.
- Submission from Mrs T.M.M.
- Submission from Ms T.N.
- Board report 14/02/2002) and court order (01/08/2001)
- Public Trustees reports and financial statements dated 31/05/2005 and 31/05/2006.

14. The hearing was attended by:

- Mrs E.O.C.
- Her brother, Mr W.D.
- Her son, Mr H.N.
- Her husband, Mr S.C.
- Grant Kingston – Office of Public Trustee

Prior to the conclusion of the hearing discussion via teleconference was conducted with Mrs E.O.C.' daughter, Mrs T.M.M..

15. The matter in dispute was the Public Trustee's intention to sell the recently acquired assets by Mrs E.O.C., the property and cattle. The family proposal was for the assets to remain within and be managed by the family and that Mrs E.O.C. and her husband have the opportunity to move into the "family home".

16. The Board was satisfied on the evidence that was available, that Mrs E.O.C. as a result of her disability still did not have the capacity to manage her estate. However, the Board noted that there had not been a deterioration in her condition to the degree that early medical reports had predicted. The Board in fact considered Mrs E.O.C. level of comprehension to be such that she acknowledged there was the need for an administration order and the reason why her family had requested the review. It was also noted that the family had previously been appreciative of the support provided by the Public Trustee and the way the estate had been managed.

17. In relation to Mrs E.O.C.' wishes, the Board was satisfied that Mrs E.O.C. agreed with and supported the family position. That is, she did not wish to have her cattle sold, or to have her part of the inherited estate sold.

18. On the evidence and information presented at the hearing the Board had some sympathy with the application. However, the Board was not convinced that the proposal had sufficient rigour and financial detail to justify the appointment of Mr H.N. as the administrator.
19. The hearing was adjourned until the 1<sup>st</sup> June 2007 to provide the family with the opportunity to submit a detailed Business Plan in relation to the management of Mrs E.O.C.' entitlements/assets from the estate of her mother, Mrs X.M.K.
20. The Business Plan proposed by Mr H.N. was received by the Board on 28<sup>th</sup> May 2007. Attached to it was market appraisal dated 15/01/2007 from the Sales Manager at, Harcourts. Mr W.D. made a submission to the Board, which was received on the 28<sup>th</sup> May 2007.
21. The Board reconvened at the Devonport Community Health Services Centre on 1<sup>st</sup> June 2007 before a differently comprised Board, the members being Leon Peck (Chairman), Melanie Bartlett (Deputy President) and Wendy Beveridge.
22. The hearing was attended by:
  - Mrs E.O.C.
  - Her husband, Mr S.C.
  - Her brother, Mr W.D.
  - Mr H.N. - via teleconference facility
  - Ms T.N. – via teleconference facility
  - Debbie Duniam - Office of Public Trustee
23. The Board considered the documentation mentioned in paragraph 13 in addition to that provided for the hearing on 12<sup>th</sup> April 2007.
24. Contained within the Business Plan and further explained at the hearing was a proposal to –
  - Increase Mrs E.O.C. ownership share of “B” property to 60% and spend capital on house renovations.

- Forego ownership of “C” property.
- Forego ownership of “D” property.
- Increase “C” property ownership to 100% and lease the property
- Forego ownership of the “E” property.
- Sell Mrs E.O.C.’s share of the cattle (her share being 134 head)

25. The proposal would see Mrs E.O.C. increase her ownership of Nugara to 60% and hold exclusive title to “C” property. In exchange the other beneficiary, her brother Mr W.D., would take 100% ownership of “D” property, “A” property, “E” property and 40% of “B” property. The objective of the proposal was for a retention of a 50/50 split in the values of the properties following the restructure.
26. Mr W.D. advised that he agreed, in principle, with the proposal but expressed a level of discomfort at the fact that redistribution of land was based solely on a valuation obtained from one real estate agent. It was also disclosed that negotiations still needed to be concluded on the sharing and management of the “B” property, the associated farm equipment and the construction of new stockyards.
27. An estimated budget associated with the proposed lease of the “C” property comprising some 200 acres was considered by the Board to be providing only a marginal return on the capital value. However, it was acknowledged that the parcel of land had been neglected and therefore needed significant pasture improvement. It was also noted that the property, with absolute beach frontage and had the potential for significant capital growth. The Board was also advised that it was proposed that \$30,000 to \$40,000 be spent on the “B” property homestead to facilitate the required level of comfort for Mrs E.O.C. and her husband.
28. Both Mrs E.O.C. and her husband indicated that they had been consulted in the development of the proposal and considered it to be “logical and sensible” however; Mrs E.O.C. stated that she was “hoping not to cause conflict within the family.” Her daughter, Ms T.N., stated that she had been consulted but her main concern was the “welfare of mum – looking

after mum.” Mr H.N. clearly indicated a willingness to sit down with Mr W.D. to finalize details however, he stated that any final decision would involve his mother, her husband and his sisters.

29. The Public Trustee’s representative, Debbie Duniam, did not offer any criticisms of the proposal and did not object to the appointment of an alternative administrator.

30. The Board considered that the proposal had merit, conditional upon the satisfactory conclusion of the negotiations between Mr W.D. and Mr H.N., which should be based on appraisals obtained from a registered land valuer. Mr H.N. impressed the Board as a person who had taken great care to prepare the proposal for the management of Mrs E.O.C.’ estate. The Board was satisfied from its dealings with Mr H.N. that he has the requisite skills and relationship to be an effective administrator for his mother. The Board also considered that the appointment of Mr H.N. as Administrator would be the least restrictive option. It was considered to be the Mrs E.O.C.’ preferred option and her family. It was considered to be financially sound and clearly took into account Mrs E.O.C.’ desire for the retention of the family property. A further benefit would be a saving on the costs associated with the Public Trustee administering the estate.

31. The Board subsequently concluded that the Represented Person:

- Is a person with a disability, and
- Is unable by reason of the disability to make reasonable judgements in respect of her estate and
- Remains in need of an administrator

32. The Board therefore ordered:

- That Mr H.N. be appointed as administrator of the Represented Persons estate in place of The Public Trustee for the balance of the 3 year term

- That the powers and duties of the administrator be those conferred by Division 4 of Part 7 of the *Guardianship and Administration Act, 1995*

33. In order to address the issues still outstanding the Board further ordered

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- That the administrator obtains a formal valuation on the property/properties bequeathed to the Represented Person following the death of her mother, Mrs X.M.K.
- That if the negotiations between parties regarding the property transfer, house renovations and cattle sales are not resolved within 4 months, then the administrator is to seek advice and direction from the Board.
- That if the aforementioned issues are satisfactorily resolved the administrator is to provide a report to the Board in 6 months detailing the investment and financial situation of the Represented Persons estate including compliance with the business plan.

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Leon Peck  
CHAIRMAN