DUNCAN LAING ADVISORY

Prepared for Commsioner Mark St Clair

Prepared by Duncan Laing

Date 14 October 2025

Washer Family Trust - Subdivision - Tapuae Country Estate

Background

1. I have been asked by the New Plymouth District Council to provide advice to Commissioner Mark St Clair arising out of some procedural matters that have arisen during the hearing of a subdivision and land use consent application by the Washer Family Trust.[1]

2. In summary, the Commissioner has raised some issues about the effect of Consent Notice No 7890638 (**Consent Notice**), being a consent notice registered against the records of title for Lots 31 and 32 DP 385658,[2] in terms of the further processing and decision making relating to the subdivision consent application.

3. I have carefully considered the Applicant's submissions dated 3 October 2025 (**Applicant's submissions**) and the cases referred to those submissions. I have not found it necessary to refer to all the cases referred to in those submissions, especially as part of the submissions cover caselaw dealing with a review of the consent notice or an application to vary it.[3]

Questions and Short Answers

4. Do the boundary adjustments as sought by the applicant and shown on Scheme Plan W-211212-RC01 Sheet 2 (Appendix A to its resource consent application), involve a *subdivision of land* as defined by section 218(1) of the Resource Management Act 1991 (**RMA**) and therefore require a subdivision consent under section 11(1) of the RMA?

   Yes, a subdivision consent is required.

5. Does Consent Notice 7890638.35 as registered against the record of title for Lot 31 DP 385658 prevent a boundary adjustment application in respect of that lot from proceeding without the consent notice being first varied (or cancelled)?

   Yes, the consent notice would need to be varied or cancelled before the boundary adjustment application can proceed.

1 For those issues, see the Commissioner's Minutes Nos 3- 5.
2 Lot 31 is the relevant lot for present purposes.
3 See Section 4 of the Applicant's submissions.

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Reasoning explained

Do the proposed boundary changes involve a subdivision of land under the Resource Management Act 1991?

The Legislation

6. The starting point is section 11 of the RMA which provides for restrictions on subdivision. Section 11(1)(a) is as follows:

> (1) No person may subdivide land, within the meaning of section 218, unless the subdivision is
> (a) first, expressly allowed by a national environmental standard, a rule in a district plan as well as a rule in a proposed district plan for the same district (if there is one), or a resource consent; and second is shown on one of the following:
> (i) a survey plan, as defined in paragraph (a)(i) of the definition of survey plan in section 2(1), deposited under Part 10 by the Registrar-General of Land; or
> (ii) a survey plan, as defined in paragraph (a)(ii) of the definition of survey plan in section 2(1), approved as described in section 228 by the Chief Surveyor; or
> (iii) a survey plan, as defined in paragraph (b) of the definition of survey plan in section 2(1), deposited under Part 10 by the Registrar-General of Land;

7. Under section 11(1)(a), a subdivision must first be expressly allowed by a national environmental standard, a rule, or a resource consent, and secondly be shown on a *survey plan* as defined in section 2(1) of the RMA.

8. The relevant part of the definition of *survey plan* in section 2(1) refers to a cadastral dataset of subdivision of land.[4] Once a resource consent is approved, section 223 of the RMA contains the procedure for the approval of a *survey plan* (as defined).

9. A consent to do something that would otherwise contravene section 11, is a subdivision consent under section 87 of the RMA.

10. In the present case, for the purposes of section 11(1)(a), the proposed boundary adjustment subdivision activity itself is a controlled activity under both the partially operative New Plymouth District Plan (**PODP**)[5] and the 2019 National Planning Standards (NPS 2019).[6] However, because of the operation of other subdivision rules such as coastal environment, sites on or adjacent to natural water, and sites of significance to Māori, the boundary adjustment proposal becomes a discretionary activity.

11. *Boundary adjustment* in the PODP is defined as having the same meaning as prescribed in the NPS 2019, and a *boundary adjustment* is defined in the NPS 2019 as meaning a subdivision that alters the existing boundaries between adjoining allotments, without

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4 It seems quite clear that none of the exceptions in paragraphs (b) to (d) of section 11(1) apply in the present case.
5 I understand all relevant subdivision rules are operative.
6 See Rule SUB-R1 in the District Plan and Section 14 of the NPS 2019.

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altering the number of allotments. *Allotment* and *subdivision [of land]* are also defined in the NPS 2019 as having the same meaning as in section 218 of the RMA set out below.

12. *Subdivision of Land* is defined in section 218(1) of the RMA. Relevantly section 218(1)(a) provides as follows:

> 1) In this Act, the term **subdivision of land** means-
> (a) the division of an allotment-
> (i) by an application to the Registrar-General of Land for the issue of a separate record of title for any part of the allotment; or
> (ii) by the disposition by way of sale or offer for sale of the fee simple to part of the allotment; or
> (iii) by a lease of part of the allotment which, including renewals, is or could be for a term of more than 35 years; or
> (iv) by the grant of a company lease or cross lease in respect of any part of the allotment; or
> (v) by the deposit of a unit plan, or an application to the Registrar-General of Land for the issue of a separate record of title for any part of a unit or a unit plan;

13. As noted by the Environment Court in *Re McKay*[7] the five methods listed in section 218(1)(a) are not equivalent with each other except as being types of subdivision and they are discrete and different in kind to one another, such that it would be incorrect to treat them as equivalent and interchangeable options for subdivision.

14. In a similar manner, the High Court in *Cleanspan Property Assets Ltd v Spark New Zealand Trading Limited*[8] noted that Parliament had adopted an exhaustive list of specified and relatively certain legal means of subdivision by using different techniques in relation to “part of” an allotment or unit.[9]

15. *Allotment* is in turn defined in section 218(2) of the RMA. Section 218(2)(a) is as follows:

> (2) In this Act, the term **allotment** means-
> (a) any parcel of land under the Land Transfer Act 2017 that is a continuous area and whose boundaries are shown separately on a survey plan, whether or not-
> (i) the subdivision shown on the survey plan has been allowed, or subdivision approval has been granted, under another Act; or
> (ii) a subdivision consent for the subdivision shown on the survey plan has been granted under this Act;

16. The various sections of the RMA outlined above must also be considered in conjunction with section 226(1) of the RMA which restricts the Registrar-General from issuing separate records of title for any land shown as a separate allotment on a survey plan to give effect to the subdivision shown on that survey plan unless he or she is satisfied that one of paragraphs (a) to (e) of section 226(1) apply.

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7 [2019] NZRMA 134 at [46].
8 [2017] NZC 277.
9 At [56] to [57].

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17. Section 226(1)(a) is as follows:

    (1) The Registrar-General of Land shall not issue a record of title for any land that is shown as a separate allotment on a survey plan (being a certificate issued to give effect to the subdivision shown on that survey plan), unless he or she is satisfied, after due inquiry, that-

    (a) the plan has been deposited in accordance with section 224 or has been approved by the Chief Surveyor for the purposes of section 228 and the provisions of section 228(2) have been complied with;

18. Looking at the current records of title for Lots 20 and 31 DP 385658, it seems incontrovertible that both contain *allotments* as defined in section 218(2).

19. Returning to section 218(1)(a), it also seems clear on the face of that provision that the division of both lots respectively into two separate areas of land will involve applications to the Registrar-General of Land for separate records of title for parts of both the two parent lots or allotments.[10]

20. While the two areas to be transferred on the scheme plan forming part of subdivision consent application are not currently given lot numbers, any survey plan submitted for approval under section 223 will be required to have separate lot numbers for those areas allocated to it.[11]

The Principles of Interpretation

21. I agree that the starting point under Section 10 of the Legislation Act 2019 is that the meaning of an enactment must be ascertained from its text and in light of its purpose and that the consideration of the purpose is a cross-check rather than a starting point.[12]

22. The Environment Court in *Re McKay*[13] after referring to the various definitions in section 2(1) and sections 11, 87, 106, 218, and 226 of the RMA, stated as follows:

    [**30**] These provisions contain several interlocking connections. Important points to note are:

    (a) The RMA provides a complete code for the control of subdivision land in New Zealand.
    (b) The correct approach to statutory construction is that the meaning of an enactment must be ascertained from its text and in the light of its purpose. Consideration of the purpose is a cross-check rather than the starting point.
    (c) The text of the RMA in relation to subdivisions is relatively crystalline, using transactional language containing precise metes and bounds, and listing the forms of subdivision which are regulated.
    (d) A cross lease is by definition in s 2 the lease of all or part of a building held by a person who has an estate or interest in the land on which the building is or is to be erected; it is not a lease of that land.

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10 In this context, Section 218(4) deems the balance of allotment to be a separate allotment. This was previously of particular importance when under prior survey rules a balance area did not require to be given a new lot number.

11 See Rules 42 and 43 of the Cadastral Survey Rules 2021.

12 See the Applicant's submissions at 3.3.

13 [2019] NZRMA 134.

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(e) For present purposes, a subdivision of land involves either:
  (i) the division of an allotment by one of five specified methods in s 218(1)(a); or
  (ii) an application for a separate certificate of title for land shown as a separate allotment on a survey plan, unless that plan already comes within one of the ten categories listed in s 226(1), being the ways in which survey plans are formally approved, whether for deposit under the Land Transfer Act or otherwise.

(f) Some circularity arises because of the inclusion of "subdivision" in the definition of "survey plan" and the connections among the definitions of:
  (i) a subdivision, being the division of an allotment; and
  (ii) an allotment, being a parcel of land of continuous area, the boundaries of which are shown separately on a survey plan; and
  (iii) a survey plan, being a plan of subdivision of land.

The circularity may be overcome by treating the reference to subdivision in the definition of survey plan be treated as simply a division of land.

[31] Taking these points into account and conscious of the dangers of summarising or paraphrasing complex statutory provisions, this set of provisions might be summarised in very broad terms for present purposes as being that no person may divide a parcel of land of continuous area and whose boundaries are shown separately on a survey plan by applying for a separate certificate of title for part of that parcel unless allowed by a district rule or a resource consent and as shown on a survey plan suitable for deposit under the Land Transfer Act 1952.

23. In the present case, as in the *McKay* case, the paragraph within section 218(1) of actual or potential relevance here, is section 218(1)(a). Breaking down the constituent aspects as outlined in the quotation above at [31], the following questions can in my view be asked and answered yes here:

- Is there to be a division of a parcel or parcels of land of continuous area and whose boundaries are shown separately on a survey plan?

- Is there intended to be an application for separate records of title for parts of those parcels?

- Is the division outlined above intended to be allowed by a resource consent and as shown on a survey plan suitable for deposit under the Land Transfer Act.[14]

24. The Environment Court in the *McKay* case ultimately concluded the conversion of a cross leased property to fee simple necessarily required the division of an allotment into two or more new allotments. It therefore constituted the division of a parcel of land shown separately on a survey plan and was a subdivision of land within the meaning of section 218(1)(a) of the RMA.[15]

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14 Now the Land Transfer Act 2017.

15 See the *McKay* case at [40]-[43].

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25. The Environment Court further concluded:

> [**55**] The short point that can be made in the relatively abstract circumstances of this application is that while it is clear in my judgment that the conversion of a cross leased property to separate freehold titles is a subdivision of land and requires a subdivision consent, the consent authority should generally approach such an application in a way that is **mindful of the possibility that there may be few, if any, material environmental implications warranting a full-scale assessment of the proposal as if it were a new development. As the Court of Appeal has noted**:[16]
>
> > The concern of s 218 of the Act is not therefore with land transactions unlikely to intensify development and thereby neither increase the density of occupation nor impact adversely on infrastructure and other amenities.
>
> (Emphasis added)

26. The Applicant places significant reliance in the Court of Appeal's decision in the *Clearspan* case[17] and the *McKay* case[18] to support the proposition that the:

> way that the term "subdivision" has been interpreted by the Courts, supports the proposition that a boundary change, as proposed, which has no environmental effects, is not subdivision for the purposes of the RMA.[19]

27. In other words, while the subdivision in this case on its face falls within the plain meaning of *subdivision of land* under section 218(1)(a), should this provision be read down or qualified so that a boundary adjustment which the Applicant says has no environmental effects is not a subdivision for the purposes of the RMA?[20]

28. There are some immediate issues with the position advanced by the Applicant in this case:

- It has actually made an application for a subdivision consent, and this has been processed by the Council to the stage of a hearing before a commissioner appointed by the Council.

- The division of land by boundary adjustments are expressly contemplated by the PODC, and by the NPS 2019.

- If there was any another lawful pathway to completing the boundary adjustments by the deposit of a survey plan and the issue of new records of title, the Applicant would surely have taken it. The RMA is a code relating to subdivision.

- Section 226 seems to be a related barrier in this situation to obtaining new records of title outside the subdivision consent application process under the RMA.

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16 *Spark New Zealand Trading Ltd v Clearspan Property Assets Ltd,* above n9, at [24].
17 *Spark New Zealand Trading Ltd v Clearspan Property Assets Ltd* [2018] NZCA 248.
18 See above.
19 See paragraph 3.1 of the Applicant's submissions.
20 I note that the Applicant at Section 3 of its submissions is putting forward its interpretation of *subdivision of land* as supporting a wider submission the consent notice does not prohibit the boundary adjustments in this case.

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- It is yet to be determined whether there are any environmental effects associated with the boundary adjustment and, if so, the scope and significance of those effects. The Applicant's approach would seem to involve some form of preliminary determination whether there were any effects or any material effects associated with the proposed division of one or more allotments.

Caselaw

29. I now propose to address the caselaw relied on by the Applicant in more detail. The starting point is the High Court's decision in the *Clearspan* case.[21] The High Court summarised its conclusions as follows:

> [**3**] I find the arrangement here is an artificial contrivance to achieve a similar substance and effect to division of fee simple ownership without falling within s 218. But s 218 defines the subdivisions of land to be regulated by the RMA specifically and exhaustively. In referring to fee simple to part of an allotment, s 218(1)(a)(ii) invokes long-established property law concepts. Clearspan's arrangement is not, technically, within those concepts. I consider it would strain the words of the statute too much to interpret Parliament's specific and exhaustive definition, referring to well-known and relatively certain property law concepts, as extending to these arrangements, even using a purposive approach to interpretation.

30. The Court went on to say that despite the importance of a purposive interpretation, such an interpretation cannot change the text itself and does not justify an interpretation which is inconsistent with text. The High Court accordingly found that the arrangements in that case fell outside what the Court found was a relatively tight definition of subdivision:

> [54] There is force to Mr Casey's submission that Parliament's purpose in passing the RMA was to regulate all modes of subdivision and the courts should honour that through purposive interpretation of s 218. Parliament itself has mandated a purposive interpretation of statutes in New Zealand, in s 5(1) of the Interpretation Act 1991 which instructs the courts to ascertain the meaning of an enactment "from its text and in light of its purpose". This has been given emphasis in the often-cited passage by the Supreme Court in *Commerce Commission v Fonterra Cooperative Group Ltd* that "[e]ven if the meaning of the text may appear plan in isolation of purpose that meaning should always be cross checked against purpose in order to observe the dual requirements of s 5".[22] And the potential effects of inappropriate subdivision on land use provide a potential reason for Parliament to provide an expansive definition of subdivision in the RMA.
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> [55] **But there are limits to the capacity of a purposive approach to expand on the text of law. Meaning is ascertained "from" its text and only "in light of" its purpose. I agree that "purpose is there to help ascertain the meaning of text and not to override or dominate it".[23] The Supreme Court emphasises the starting point is the text. A court's view of Parliament's purpose is across-check. That can lead to ambiguity being interpreted in line with Parliament's purpose. But it cannot change the text itself and does not, in my view, justify judicial interpretation that is inconsistent with the text.** The rule of law must still stand for the proposition that it is the law that rules, not those who make the law or apply the law or interpret the law. The law is the text. In the search for certainty of meaning the statutory text cannot be stretched beyond breaking point.

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21 See above.

22 *Commerce Commission v Fonterra Coooperative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22].

23 Justice Susan Glazebrook "Do they say what they mean and mean what they say? Some issues in statutory interpretation in the 21st century" (2015) 14 Otago Law Review 61 at 67-68.

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(Emphasis added. Footnotes aligned to this advice.)

31. The Court of Appeal dismissed an appeal against the High Court decision. It referred to the High Court's reasoning with approval.[24] In particular, the Court of Appeal:

- Adopted the High Court's approach to statutory interpretation as outlined above;
- Noted that the potential effects of inappropriate subdivision provide a potential reason for Parliament to provide an expansive definition of "subdivision" in the RMA; and
- Further noted agreeing with the High Court that the text was relatively crystalline or tight and that Parliament has chosen transactional language in section 218 that contains precise metes and bounds. Not every "division of an allotment" or interest in land qualifies.

32. Putting aside for one moment the matters outlined in paragraph 28 above, in my view the text of section 218(1)(a) is clear and precise on its face and a cross-check of its purpose as outlined in the High Court and Court of Appeal does not justify an interpretation that is inconsistent with the text itself.

33. In my view, there is no ambiguity in the words of the text itself, and it would be going beyond the limits of a purposive approach to read down the words of section 218(1)(a) in the manner proposed by the Applicant.

34. The Applicant's submissions take a different approach. It says that a boundary change is not a "transactional" subdivision under the RMA. Some of the passages in the Court of Appeal's decision particularly relied on by the Applicant are contained in the following passages:

> **[24] Thirdly, it is reasonably clear to us why Parliament chose a precise transactional definition in s 218(1). It was not seeking to capture each and any interest created in land, but only those transactions with material environmental implications.** As Randerson J observed in *Kitewaho*, subdivisions have physical effects, **including more intensive use of land and communal infrastructure services, and precedent effects.[25] It is these matters, in particular the intensity and scale of use of land, that the RMA regulation of subdivisions is concerned with and which s 218 focuses upon. It does so by regulating certain land transactions; those that carry the greater risk of intensifying the use of land and services, and of impairing amenities**. Typically, district plans establish land use controls governing minimum lot sizes and the density of occupation thereof. **The concern of s 218 is not therefore with land transactions unlikely to intensify development, and thereby neither increase the density of occupation nor impact adversely on infrastructure and other amenities**. The reasonably short-term lease originally entered by Spark was not s 218's concern, because it did not affect these considerations. Nor, it might be thought, would a transaction not materially different in its *environmental* implications from that lease. Neither that lease nor the arrangement between the Goldwaters and Clearspan would in practice facilitate intensified development.

24 See [22] to [23].
25 *Waitakere City Council v Kitewaho Bush Reserve Co Ltd* at [99].

> **[25]** Fourthly, we turn then to the application of the plain meaning of s 218(1)(a)(ii) to this arrangement. The issue here is the legal effect of the arrangement entered. If we have a criticism of the analysis in the Environment Court, and of Mr Casey's argument, it is that they focused unduly upon perceived purpose (being to avoid the application of s 218) rather than the legal effect of the arrangement.
>
> (Applicant's emphasis added. Footnotes aligned to this advice.)

35. In my view, these passages when read in context, do not support the Applicant's position that the boundary adjustment in this case does not involve a *subdivision of land* as defined in section 218(1). The Court of Appeal concluded that the arrangement in that case did not amount to a *subdivision of land* based on the approach to statutory interpretation outlined by it and the High Court.[26] A similar approach to statutory interpretation should in my view be applied to section 218(1)(a).

36. The two passages set out above from the Court of Appeal's decision start with noting that it was reasonably clear as to why Parliament chose a *precise* transactional language in section 218 as it was not seeking to capture each and every interest in land but only those (identified by Parliament) with material environmental implications.

37. In other words, I consider that the Court of Appeal is saying that Parliament has identified certain transactions in section 218(1) considered to have those implications or as it later noted, the RMA regulates certain land transactions that carry the greater risk of intensifying the use of land and services, and impairing amenities. This does not in my view support the proposition that a subdivision (in this case a boundary adjustment) otherwise falling within the "metes and bounds" of section 218(1)(a) should be excluded from that provision if it is found to have no or no material effects.

38. A further passage that the Applicant in its submissions[27] relies on, relates to a statement by the Court of Appeal that typically district plans establish land use controls, and the concern of section 218 is not with land transactions *unlikely* to intensify development and thereby neither increase the density of occupation nor impact adversely on infrastructure and other amenities.

39. Again, I do not read this passage as supporting the view that a subdivision if found on its facts to not involve any or any material effects, does not constitute a subdivision under section 218(1)(a).[28]

40. Finally, and consistent with my own analysis outlined above, in my view the question as to whether there are any effects on a subdivision application and if so the extent of those effects, are properly matters for assessment in each case in light of the available evidence, and not some initial threshold level.

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26 At [21] and [25].

27 Applicant's submissions at 3.10 to 3.10.

28 I note that in the present case, it is yet to be ultimately determined by the Commissioner whether the subdivision application involves any such effects. I have therefore not expressly dealt with this aspect of the Applicant's submissions at 3.7 to 3.12, and do not consider that I need to do so.

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41. In *Re McKay*,[29] the Environment Court dealt with some subsidiary issues including the detail of the assessment of effects that would be required in that case.[30] I have referred to the relevant passage at paragraph 25 above. In my view, that passage reflects the proper approach to be adopted to a subdivision consent application where there may be few if any effects on the environment.

Summary

42. In summary, I conclude that the boundary adjustment division of both Lots 20 and 31 into 2 allotments each, involves a subdivision of land under section 218(1)(a) and requires a subdivision consent.

Does the Consent Notice need to be varied or cancelled to allow the subdivision consent application to proceed?

Section 221

43. Sections 221(3) and 221(3A) of the RMA contain the process for varying or cancelling consent notices. Prior to enactment of the Resource Management (Simplifying and Streamlining) Amendment Act 2009, a consent notice could be cancelled by agreement and without further formality apart from registration under section 221(5). Cancellation by agreement is no longer an available statutory procedure.

The wording of the Consent Notice

44. The Consent Notice provides in part as follows:

> *That Lots 31 & 32 shall not be further subdivided and shall not be disposed of other than in conjunction with Lots 1-30 inclusive.*

45. There are two separate restrictions in this consent notice. Firstly, no further subdivision is allowed, and secondly, the two lots shall not be disposed of except in conjunction with Lots 1-30.

Interpretation of Resource Consents

46. There is a significant amount of case authority on the interpretation of resource consents.[31]

47. The *Brookers Resource Management* text summarises the position as follows:

> In *Manukau CC v Warren Fowler Ltd* EnvC C124/98, the Environment Court held that: "if there is an overriding principle for the construction of a resource consent it is that it has to be interpreted in the factual matrix (circumstances) at the time it was granted and so as to reflect the purposes and the duties imposed by the Act." See also *Clevedon Protection Soc Inc v Warren Fowler Ltd* (1997) 3 ELRNZ 169 (EnvC), and *Birchfield Minerals Ltd v West Coast RC* EnvC C173/03.

29 See above.
30 At [55].
31 See *Brookers Resource Management,* at Note A104.18(2).

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The Court set out the following guidelines for establishing what those circumstances are:

(i) So far as possible the consent should be interpreted upon its face subject to consideration of matters raised below;

(ii) Where possible, the words used should be given their ordinary meaning, so that they may be understood by the general public: *Stop CRA Pollution (SCRAP) Inc v NZ Refining Co Ltd* (1993) 2 NZRMA 586 (PT);

(iii) The consent may be qualified by the wording of the wider application, as discussed in *Clevedon Protection Soc* (above);

(iv) A land use consent needs to be read in the context of the rule that required that consent be obtained. Other resource consents may also need to be read in the context of statutory instruments. There is no express authority for this guideline, but it is taken for granted, eg *Hutt CC v Turnbull* (1993) 2 NZRMA 553 (PT);

(v) The Court may have regard to special meanings of a particular industry: *Stop CRA* (above);

(vi) Regard should be had to the purposes of the Act (*Stop CRA)* although care should always be taken not to work backwards from adverse effect so as to define them out of the word being constructed; and

(vii) The use of affidavits to establish meanings is generally discouraged because interpretation is a question of law, not fact.

48. The starting point is the ordinary meaning of the wording itself. The dictionary meanings of *subdivision* include:

- Any of the parts into which something is divided.[32]
- Something produced by subdividing: such as a tract of land surveyed and divided into lots for the purpose of sale.[33]
- An area of real estate subdivided into individual lots.[34]

49. These definitions would suggest that the Consent Notice, if given its ordinary meaning, should be interpreted as prohibiting subdivision generally. There is nothing to suggest on the face of the Consent Notice that some specific forms of subdivision (such as boundary adjustments as defined) should be excluded from its scope either by express words or necessary implication.

50. Further, the words *shall not be **further** subdivided* indicate that the consent notice is referring back to the 2006 subdivision itself which was a subdivision under the RMA. This in turn would suggest that the consent notice must also be taken as referring to a subdivision as

32 The Cambridge Dictionary.
33 The Merriam-Webster Dictionary.
34 The Free Dictionary.

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defined in the RMA. In any event, and as I have already noted,[35] the RMA is a code relating to subdivision, there is no other legal mechanism to achieve the division of allotments by way of boundary adjustment in the present circumstances.

51. Looking at the immediate context, this includes what might have been said in the subdivision consent decision in 2006 on the topic, given that the Consent Notice is derived from a condition of consent.

52. However, the 2006 subdivision consent decision which gave rise to the consent notice condition, does not discuss the reasons why a condition requiring the consent notice was imposed. In these circumstances, the 2006 subdivision consent decision does not assist in the interpretation of the consent notice.

53. Turning to other guides to interpretation, the Consent Notice should be read in the context of the rules in the PODP that expressly provides for boundary adjustments as discussed above. It would be a surprising proposition if a boundary adjustment subdivision required a consent under the RMA, as I have concluded above, but not for the purposes of the Consent Notice which simply prevents further subdivision.

54. Also, in terms of the purpose and duties of the RMA to the extent that they might be relevant here, in my view firstly the purpose of the RMA would be best served by the Consent Notice applying generally to the subdivision of land as defined in section 218(1), and secondly the duties under the RMA requiring the obtaining of subdivision consents, do not support the reading down of the Consent Notice.

55. I now turn to the remaining words in the Consent Notice- *shall not be disposed of other than in conjunction with Lots 1-30 inclusive.* Relevant dictionary meanings for *disposed of* include*:*

- To transfer to the control of another.[36]
- To give, sell, or transfer to another.[37]

56. On its face, the boundary adjustment in relation to the land to be transferred from Lot 31 involves a disposition that is not made *in conjunction with* Lot 20. Rather, it would involve a disposition of land to be added to the land in Lot 20. The apparent intention behind this part of the Consent Notice is to prevent Lot 20 and an undivided share of lots 31 and 32 from being transferred *except* in conjunction with each other.

57. I have given consideration as to whether there is any basis to interpret that restriction in the Consent Notice in a manner that would not apply in the present circumstances, but I do not consider that based on the conventional approaches to interpretation, there is any basis for doing so.

35 At paragraph 28.
36 Merrian-Webster Dictionary.
37 Collins Dictionary.

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The Applicant's submissions

58. I now comment on the Applicant's submissions relating to the interpretation of the Consent Notice in so far as those submissions relate to the words *shall not be further subdivided*.

59. At Section 2 of its submissions, the Applicant in summary advances the proposition that on a plain, non-technical reading the phrase no further subdivision in the consent notice for lot 31 can be interpreted as a prohibition on the creation of *additional* allotments.[38]

60. I respectfully do not accept that proposition for reasons outlined above. In particular, I do not agree that the Consent Notice can be interpreted in that manner having regard to its express words and to the usual guidelines of statutory interpretation.

61. However out of deference to the Applicant's specific submissions at paragraphs 2.1 to 2.10, I comment as follows:

    - I accept that the Consent Notice was intended to prevent Lot 31 being further subdivided, but not that the Consent Notice was intended to restrict the boundary adjustments as is suggested by the Applicant, by reference to what might or might not have been the intentions of the developer at the time. This goes well beyond the conventional basis for interpretation of resource consents.[39]

    - The fact that the Consent Notice was first imposed in the resource consent decision in 2006 after some thirty lots were created, does not in my view justify the inference the Consent Notice should be given a restrictive interpretation.[40]

    - I accept that the Consent Notice should be understood in light of the resource consent[41] but as I have already noted above, there is nothing in the consent decision that would justify the interpretation of the Consent Notice contended for by the Applicant.

    - The passages from the Environment Court's decision in *Lakes District Rural Landowners Society Incorporated v Queenstown Lakes District Council*,[42] if anything support the proposition that the Consent Notice should not be read down as excluding some forms of subdivision, which depending on the circumstances, may have effects on the management of resources.

    - Related to the last point, if the approach contended for by the Applicant was adopted, every boundary adjustment subdivision would be excluded from the ambit of the Consent Notice despite the size, shape, and any other actual of potential environmental effects resulting from the resultant allotments.

62. At section 3 of its submissions, the Applicant makes a further submission to support the submissions made in section 2. This is to the effect that the way the term "subdivision" in the RMA has been interpreted by the Courts, supports the proposition that a boundary change, as proposed, which (according to the Applicant) has no environmental effects, is not a subdivision for the purposes of the RMA.[43]

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63. I consider that I have already fully set out my own understanding as to how *subdivision of land,* as defined in section 218(1) of the RMA, should be interpreted, and how it should be applied in the present circumstances.[44] In so doing, I have commented where necessary on the Applicant's submissions in section 3 and I do not need to repeat those comments here.

Conclusions.

64. Given all the factors outlined above, I do not consider that there is any proper basis for reading down the Consent Notice wording so that it does not extend to boundary adjustments that do not create additional allotments. I further consider that the Consent Notice prevents the proposed disposition of allotments to give effect to the boundary adjustments.

65. Accordingly, I am of the view the Consent Notice would need to be varied or cancelled before the subdivision consent application can proceed further.

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38 At 2.11.
39 At 2.1 to 2.3.
40 At 2.5 to 2.8.
41 At 2.9.
42 At 2.10.
43 See paragraphs 3.1 to 3.12.
44 See paragraphs 6 to 41 above.

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