

Directions/Minute of the Commissioner #1
LUC24/48662 and SUB24/50201
Application for Washer Family Trust Limited
1 and 9 Washer Road, Omata

1. Pursuant to section 34A of the Resource Management Act 1991 (RMA), independent commissioner Mark St Clair has been appointed by New Plymouth District Council (NPDC) to hear and determine the applications lodged by Washer Family Trust Limited (the Applicant) for a subdivision for a boundary adjustment between two existing lots and land use consent to site dwellings/structure in side yard setbacks at 1 and 9 Washer Road, Omata.
2. The hearing is scheduled to commence at **9am on Thursday 2 October 2025** at the New Plymouth District Council Civic Centre, 84 Liardet Street, New Plymouth. At this stage the hearing is scheduled for one day, with Friday 3 October 2025 set aside as a reserve day and will only be used if required.
3. NPDC will separately issue a formal hearing notice to the parties closer to the hearing.
4. The Commissioner notes that section 103B of the RMA, requires a consent authority to provide the section 42A reports to the applicant and submitters who wish to be heard. These must be provided at least 15 working days prior to the hearing.
5. In addition, section 103B requires the applicant to provide the consent authority with briefs of evidence 10 working days before the hearing. Submitters calling expert evidence must provide that evidence five (5) working days before the hearing.
6. The Commissioner notes that the consent authority must give written or electronic notice to the parties that the applicant's evidence and any submitter expert evidence is available at the consent authority's offices. In relation to this last matter, I request that NPDC email the parties with a link to the Council's website of any material filed.
7. Accordingly:
 - a) Pursuant to 103B(2) of the RMA, the Commissioner directs that the NPDC section 42A report be provided to the parties, by way of email with a link to the Council's website, no later than **12noon on Wednesday 10 September 2025**.
 - b) Pursuant to section 103B(3) of the RMA, the Commissioner directs that the Applicant is to provide written briefs of all their evidence to Claire Kelly (claire.kelly@npdc.govt.nz), Governance Advisor at NPDC, by way of email no later than **12 noon on Wednesday 17 September 2025**.
 - c) The Commissioner requests that as soon as practicable following receipt of any such evidence received from the Applicant, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
 - d) Pursuant to section 103B(4) of the RMA, the Commissioner directs that if any person who has made a submission intends to present expert evidence at the hearing, including expert planning evidence, then that party is to provide a written

brief of that expert evidence to Claire Kelly (claire.kelly@npdc.govt.nz), Governance Advisor at NPDC, by way of email no later than **12 noon on Wednesday 24 September 2025**.

- e) The Commissioner requests that as soon as practicable following receipt of any evidence received from submitters, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
- f) In terms of the above Directions the reports and evidence should be provided to NPDC electronically by email. Hard copies of the evidence should only be provided on request.
- g) Pursuant to s41C(1) of the RMA, the Commissioner directs that in respect of expert evidence pre-circulated in accordance with these Directions, the hearing will be conducted in the following manner:
 - The section 42A report(s) will be taken as read;
 - The applicant that has provided the pre-circulated evidence is to call the witness in person;
 - The witness should be introduced and asked to confirm his or her qualifications and experience;
 - The witness should be asked to confirm the matters of fact and opinion contained in the brief of evidence;
 - The witness will then be given an opportunity to draw to the attention of the Commissioner the key points in the brief. No new evidence shall be introduced, unless it is specifically in response to matters raised in other pre-circulated briefs of evidence supplied by another party – in such cases the new evidence shall be presented in written form as an Addendum to the primary brief of evidence and it may be verbally presented by the witness. If there is any variation between what the witness says and what is in the brief of evidence, the Commissioner will assume that the written brief is the evidence unless the content of the brief is specifically amended by the witness;
 - The witness may then be questioned by the Commissioner.
- 8. Non-expert evidence (including legal submissions) should be tabled and read aloud on the day that the relevant party appears at the hearing.
- 9. The hearing will be conducted in a manner which is appropriate and fair, but without unnecessary formality. Subject to adequate notice, the Commissioner will receive written or spoken evidence in Te Reo Māori. If any party wishes to present evidence in Te Reo Māori, they are requested to contact Claire Kelly (claire.kelly@npdc.govt.nz), Governance Advisor at NPDC, no later than **3pm on Wednesday 10 September 2025**.
- 10. The Commissioner also requests that all parties (the NPDC reporting officer, the applicant, and any of the submitters) calling expert witnesses liaise amongst

themselves in order to facilitate their respective experts conferencing on matters relevant to their specific areas of expertise prior to the preparation of their reports or evidence (including any applicable conditions of consent) and through to the commencement of the hearing. The aim of the conferencing should be to identify areas of agreement and disagreement which can then be noted in the reports and evidence (Environment Court Practice Note 2023, Sections 9.3 and 9.4).

11. The Commissioner will attempt to focus on the issues of contention during the hearing and in deliberations thereafter and so the assistance of the parties to clearly identify areas of expert agreement and disagreement in this manner will be greatly appreciated.
12. Any correspondence to the Commissioner should be directed through Claire Kelly), Governance Advisor at NPDC (claire.kelly@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 26 August 2025

Directions/Minute of the Commissioner #2
LUC24/48662 and SUB24/50201
Application for Washer Family Trust Limited
1 and 9 Washer Road, Omata

1. Further to the timeframes set out in Minute #1 dated 26 August 2025, the section 42A report and all the applicant's evidence has been filed and distributed to the parties.
2. Following an initial review of the section 42A Report, I note that there are a number of references within the section 42A report to the "s95 report". The "s95 report" being the Notification Report prepared under section 95 of the Resource Management Act 1991(RMA). I understand that the "s95 report" has not been distributed to the parties. This is not unusual as a matter of process with the "s95 report" being the Council's separate decision on whether or not to notify the application and in what form; and as such, not being before me. However, with the section 42A report referencing the "s95 report" in a number of places, it may be useful for the parties to have the "s95 report".
3. Accordingly, the Commissioner requests that as soon as practicable, New Plymouth District Council (NPDC) provides a copy of the section 95 of the RMA report to all other parties to these proceedings by way of email with a link to the Council's website.
4. The remainder of the timeframes and directions in Minute #1, remain in place.
5. Any correspondence to the Commissioner should be directed through Claire Kelly, Governance Advisor at NPDC (claire.kelly@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 18 September 2025

Directions/Minute of the Commissioner #3
LUC24/48662 and SUB24/50201
Application for Washer Family Trust Limited
1 and 9 Washer Road, Omata

1. The hearing is scheduled to commence at 9.00am tomorrow, at New Plymouth District Council offices. That remains the case.
2. On reviewing the material handed up, the “Joint Submissions by 8 Freehold Residents” (Joint Submission) which has also been distributed to the parties, at section 3 on Page 2, the Joint Submission references, “*The Residential and Building Covenants include an express prohibition on further division or subdivision.*”. It further refers to LINZ Instrument 7890638.42 (Encumbrance) with a copy attached to the Joint Submission. I have attached that LINZ instrument to this minute.
3. In terms of material I currently have before me, that does not include:
 - a) A copy of the Record of Title for both Lots 20 and 31 DP 385658
 - b) A copy of the resource consent/s for the establishment of the Farm Park
 - c) A copy of the consent notice that attaches to Lot 31 DP 385658
4. I would be obliged if the documents set out in Item 3 a) – c) above could be provided at the commencement of the hearing tomorrow morning by the Applicant.
5. I have briefly reviewed the legal submissions for the Applicant, that were helpfully filed today and circulated to the parties. The submissions do not appear to address issue as to the prohibition on further subdivision.
5. Therefore, as a procedural matter at the commencement of the hearing, I wish the Applicant to address;
 - a) Does the Record of Title itself restrict further subdivision ?
 - b) If yes, what is the nature of the consent notice/covenant restricting further subdivision?
 - c) If a prohibition on further subdivision is in place, is the Applicant applying to vary the consent notice/covenant?
 - d) Has an application for variation of consent notice/covenant been lodged?
 - e) What process should follow?
6. Any correspondence to the Commissioner should be directed through Claire Kelly), Governance Advisor at NPDC (claire.kelly@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 1 October 2025

Directions/Minute of the Commissioner #4
LUC24/48662 and SUB24/50201
Application for Washer Family Trust Limited
1 and 9 Washer Road, Omata

1. The hearing commenced at 9.00am on 2 October 2025, with presentations from all the parties. I adjourned the hearing at 4.45pm on the same day having explained to the parties the purpose of the adjournment which is further addressed in this minute.
2. At the hearing, an initial procedural matter related to questions I raised in Minute #3 about any consent notices that may prevent further subdivision, was there an application to cancel or vary any consent notices, and if so, what process should be followed. Mr Young, counsel for the applicant, verbally responded to my questions in Minute #3 at the hearing, that in brief I summarise as follows; the boundary adjustment being applied for was not within the definition of “subdivision” in the Resource Management Act (RMA), and as such an application to amend the consent notice under section 221 of the RMA was not required. Mr Young helpfully filed those oral submissions in writing which provide the full reasoning and they have been placed on the hearing website <https://www.npdc.govt.nz/council/hearings/2025/october/washer-family-trust-limited/>.
3. In terms of Mr Young’s legal submissions on the procedural matter, I explained at the hearing that I wished to seek independent legal advice on the matter under section 41C of the RMA. The applicant advised at the hearing, that they would not oppose such advice being sought.
4. Therefore, I request that New Plymouth District Council seek to engage a barrister/solicitor that has the capacity, capability and time to undertake the task. At the same time, I will prepare a set of questions as to the issues around the procedural matter I seek to be addressed. I will issue a separate minute with the specific questions I wish to be addressed.
5. For completeness, as advised at the hearing, the submitters and the section 42A reporting officer will be provided the opportunity to respond in writing to the written legal submissions from Mr Young and the independent legal advice being sought. In addition, the Applicant will be provided the opportunity to respond to the independent legal advice being sought and any response from the submitters and/or the section 42A Reporting Officer. I will advise as to the timeframe for those responses once a date for the filing of the legal opinion has been confirmed. Again, as explained at the hearing any responses need to be focused on the procedural matter, and it is not an opportunity to relitigate matters already addressed at the hearing. Finally, as advised at the hearing, at this stage, the remainder of the process will be conducted “on the papers” and the hearing will not be reconvened with the parties appearing in person.
6. Any correspondence to the Commissioner should be directed through Claire Kelly, Governance Advisor at NPDC (claire.kelly@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 6 October 2025

Directions/Minute of the Commissioner #5
LUC24/48662 and SUB24/50201
Application for Washer Family Trust Limited
1 and 9 Washer Road, Omata

1. Further to Minute #4, I have been advised that New Plymouth District Council (NPDC) have engaged Mr Duncan Laing of Duncan Laing Advisory, to provide independent legal advice on the procedural matter as to Applicant's position which, in summary, is that the boundary adjustment being applied for was not within the definition of "subdivision of land" in the Resource Management Act (RMA), and is not prohibited by the consent notice.
2. By way of background, the proposed boundary adjustment affects Lots 31 and 20 DP 385658 where there is a consent notice in place. The Consent Notice 7890638.35, registered against the record of title for Lot 31 DP 385658, that states, "*That Lots 31 and 32 shall not be further subdivide and shall not be disposed other than in conjunction with Lots 1-30 inclusive;*". There is no similar consent notice registered against the record of title for Lot 20 DP 385668.
3. Based on the Applicant's position as set out in the submissions of Mr Young dated 3 Oct 2025, my questions for Mr Laing are as follows:
 - a) 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?
 - b) 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)?
4. I direct that, Mr Laing be instructed to provide his independent legal advice to questions 3.a) – b) to Ms Claire Kelly (claire.kelly@npdc.govt.nz), Governance Advisor at NPDC, by way of email no later than **3pm on Wednesday 15 October 2025**.
5. As soon as practicable following receipt of the legal advice from Mr Laing, NPDC is to provide a copy to all other parties to these proceedings by way of email with a link to the Council's website.
6. The submitters and/or Section 42A Reporting Officer may then prepare a written response as to the procedural matter, being the Applicant's position and the independent legal advice, which is to be provided to Ms Claire Kelly (claire.kelly@npdc.govt.nz), Governance Advisor at NPDC, by way of email no later than **3pm on Wednesday 22 October 2025**.
7. As soon as practicable following receipt of any written response from the submitters and/or Section 42A Reporting Officer, NPDC is to provide a copy to all other parties to these proceedings by way of email with a link to the Council's website.

8. The Applicant is then to provide any written response to the independent legal advice and any response from the submitters and/or section 42A Reporting officer as to the procedural matter to Ms Claire Kelly (claire.kelly@npdc.govt.nz), Governance Advisor at NPDC, by way of email no later than **3pm on Thursday 30 October 2025**.
9. As soon as practicable following receipt of any written response from the Applicant, NPDC is to provide a copy to all other parties to these proceedings by way of email with a link to the Council's website.
10. I will then review all the information provided and set out the next steps.
11. Any correspondence to the Commissioner should be directed through Claire Kelly, Governance Advisor at NPDC (claire.kelly@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 7 October 2025

Directions/Minute of the Commissioner #6
LUC24/48662 and SUB24/50201
Application for Washer Family Trust Limited
1 and 9 Washer Road, Omata

1. Having sent out Minute #5 dated 7 October 2025 confirming the engagement of Mr Laing to provide an independent legal opinion, setting out the questions for which I was seeking legal advice and providing time frames for that advice and responses from the parties, I received a memorandum from the Applicant's counsel Mr Young in the late afternoon of 7 October 2025. That memorandum was distributed to the parties today.
2. Having agreed to not oppose my seeking independent legal advice under section 41C of the Resource Management Act (RMA) at the hearing, the Applicant, having since further considered section 41C of the RMA, sets out in the memorandum that I do not have the power to seek said independent legal advice as I have not advised that I have formed a view as to section 41C(4)(a) of the RMA; namely;

the activity that is the subject of the hearing may, in the authority's opinion, have a significant adverse environmental effect;
3. I am however satisfied that I have the power under section 41C(4) to make the directions as set out in Minute #5, and in these circumstances, it is not necessary or appropriate that I revisit my directions.
4. To explain my position further for the benefit of all parties, I agree that the evidence present by the Applicant is that the application does not have any adverse environmental effects. That said I note that the section 42A reporting officer's evidence is that there are significant adverse environmental effects.
5. It is not appropriate for me to reach a concluded decision as to the significance of the adverse effects of the proposal at this point of the process. However, at this point in proceedings with contested evidence pointing both ways, I have formed the opinion for the purposes of section 41C(4)(a) that there may be significant adverse environmental effects.
6. I have also found that the other requirements of section 41C(4) are met and that I can seek independent legal advice as I have done.
7. It follows that the questions, directions and timeframes set out in Minute #5 remain in place.
8. Any correspondence to the Commissioner should be directed through Claire Kelly, Governance Advisor at NPDC (claire.kelly@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 8 October 2025

Directions/Minute of the Commissioner #7
LUC24/48662 and SUB24/50201
Application for Washer Family Trust Limited
1 and 9 Washer Road, Omata

1. Further to Minute #5, Mr Laing provided independent legal advice to my questions set out in that same minute, the submitters and section 42A Reporting Officer provided written commentary on Mr Laing's legal advice and the similarly the Applicant also responded to Mr Laing's legal advice. All responses were within the timeframes set out in Minute #5 and the responses distributed to all the parties.
2. I will review all the material filed and confirm that I have all the information I require, before proceeding to deliberations and preparation of a decision on the procedural matter.
3. Any correspondence to the Commissioner should be directed through Claire Kelly, Governance Advisor at NPDC (claire.kelly@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 4 November 2025

Directions/Minute of the Commissioner #8
LUC24/48662 and SUB24/50201
Application for Washer Family Trust Limited
1 and 9 Washer Road, Omata

1. As set out in Minute #3, I received material handed up the “Joint Submissions by 8 Freehold Residents” (Joint Submission) which was distributed to the parties, and at section 3 on Page 2, the Joint Submission references, *“The Residential and Building Covenants include an express prohibition on further division or subdivision.”*. The Joint Submission also referring to LINZ Instrument 7890638.42 (Encumbrance) with a copy attached. As a procedural matter before the commencement of the hearing the next day, I sought that the Applicant address a number of questions as to the record of title, the nature of any restrictions on further subdivision (consent notices), had an application to vary or cancel any consent notice been made and what process should be followed (see Para 5 of Minute #3).
2. Mr Young (Counsel for the Applicant Washer Family Trust Limited) addressed those matters in oral submissions at the hearing and responded to my questions. As set out in Minute #4, I summarised the position advanced by Mr Young noting that, *“the boundary adjustment being applied for was not within the definition of “subdivision” in the Resource Management Act (RMA), and as such an application to amend the consent notice under section 221 of the RMA was not required. Mr Young helpfully filed those oral submissions in writing which provide the full reasoning and they have been placed on the hearing website <https://www.npdc.govt.nz/council/hearings/2025/october/washer-family-trust-limited/>.”*¹
3. As advised at the hearing and set out in Minute #4, I sought independent legal advice on the Applicant’s position, and also signalled the provision of the opportunity for the submitters and section 42A reporting officer to respond to the independent legal advice and for Applicant to have the final response.
4. In Minute #5, I set out the specific questions for Mr Laing, the legal advisor engaged by Council and set out the timeframe for the filing of the legal advice and responses from the parties.
5. Having agreed to my seeking independent legal advice under Section 41C of the RMA at the hearing, the Applicant filed a memorandum challenging the validity of my being able to obtain a further legal opinion. I addressed that matter in Minute #6.
6. As recorded in Minute #7, the independent legal opinion was subsequently filed, the submitters, section 42A Report officer and the Applicant duly filed their responses in line with the timetable set out in Minute #5. All the material filed was distributed to the parties.

¹ Minute #4, dated 6 October 2025, Para 2

Position of the Applicant

7. The position of the Applicant was set out in the written submission of Mr Young dated 3 October 2025. This submission being the written version of the position put by Mr Young on behalf of the Applicant at the hearing on 2 October 2025. Mr Young set out the position in detail with references to case law. I have found it helpful to set out Mr Young's conclusion in full to the Applicant's position, namely;

6.1 *For the reasons set out above, the Applicant respectfully submits that the proposed boundary adjustment does not constitute "further subdivision" within the meaning of Lot 31's consent notice terms. The adjustment creates no new allotments, has no adverse environmental effects, and does not undermine the purpose of the original subdivision consent. Rather, positive effects arise from the application, including decreased risk of natural hazard impacts. In the alternative, should the consent notice be interpreted as prohibiting such an adjustment, the statutory framework under s 221 RMA provides a clear pathway for variation or cancellation — by agreement between the Applicant and NPDC or by the Applicant making an Application under s 221. The variation or cancellation is justified by both changed circumstances and the efficient use of resources. In either event, the change or cancellation should proceed on a non-notified basis, as there are no affected parties in terms of the RMA.²*

Legal Opinion

8. The specific questions I put to Mr Laing in relation to the submissions from Mr Young were:
- a) 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?
 - b) 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)?³
9. Mr Laing stepped through his reasoning⁴ for concluding in response to question a)
- "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.*"

And to question b),

² Submissions on behalf of the Washer Family Trust on procedural question regarding RMA s218 and Tapuae Country Estate Consent Notices, Mr A Young, dated 3 October 2025, Para 6.1

³ Minute #4, dated 6 October 2025, Para 3

⁴ Legal Advice, Duncan Laing, dated 14 October 2025

“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.”

Position of the submitters and the Section 42A reporting officer

10. The submitters supported and adopted the position as set out in Mr Laing's legal advice, seeking that the application be declined and setting out what they saw as the correct procedure moving forward.⁵
11. Similarly, the section 42A Reporting officer accepted Mr Laing's advice and set out what Mr Robinson noted as relevant process points.⁶

Applicant's Response

12. In response to Mr Laing's advice and, responses from the submitters and the section 42A reporting officer, the Applicant maintained their position that Lot 31's consent notice does not prohibit the proposed minor boundary adjustment.⁷ Mr Young's submission on behalf of the Applicant noted no further subdivision was occurring in relation to the intent of the consent notice and no additional lots were being created. Further that,
 - “4. Regarding the “further subdivision” issue, the Applicant respectfully refers the Commissioner to its earlier written submissions — filed on 3 October 2025 (“**first procedural submissions**”), particularly at:
 - a. [2.1] – [2.11] submitting: lot 31's record of title does not restrict the boundary adjustment — in light of the consent notice's interpretation;
and
 - b. [3.1] – [3.12] submitting: judicial interpretation of “subdivision” under the RMA confirms the consent notice does not prohibit the boundary adjustment.
 5. The consent notice is intended to prevent additional lots being created at Tapuae, because additional lots allowing residential dwellings would generate effects. This is a natural and ordinary meaning of the consent notice — also reflecting a purposive interpretation. The consent notice was implemented in the context of a series of development stages and sought to avoid additional lots beyond that final stage, as indicated by the words ‘no further subdivision’. But the consent notice was not intended to restrict a boundary adjustment such as

⁵ Response to procedural Issue – Further submissions by 8 Freehold Residents of Tapuae County Estate – dated 22 October 2025

⁶ Memorandum of the Section 42A Reporting Officer, Mr C Robinson, dated 22 October 2025

⁷ Applicant's further submissions addressing consent notice condition, Mr A Young, dated 30 October 2025, Para 2

this, because it is not a ‘further’ subdivision which would create additional lots, and reading it in this way requires a technical reading.”

6. *However, if the Commissioner agrees with Mr Laing, the Applicant submits:*
- a. *The Commissioner has jurisdiction to vary the consent notice condition — of his own volition, as part of the current application.*
 - b. *Alternatively, the Applicant can apply to vary the consent notice conditions, as part of the current application.*
 - i. *Variation of the consent notice conditions should proceed on a non-notified basis as there are no “affected” people for the purposes of the RMA.*
 - ii. *In addition, the variation of the consent notice would be a consequence of the current consent application process, which was limited notified. All persons who might be considered potentially affected (although the Applicant says they are not) have already had the opportunity to be involved in considering the substance of the activity for which consent is sought. There is no utility in re-running the same arguments again. If the substantive application has acceptable effects, then the modification of the consent notice to allow the activity to occur must also necessarily also be acceptable.*
 - c. *Further, the substantive application should still be considered notwithstanding the consent notice condition. The substantive consent can be granted subject to a condition precedent requiring lot 31’s consent notice conditions be varied before the substantive consent could be implemented.⁸*

(Footnotes omitted)

13. The submissions of Mr Young further expanded his reasoning as to paragraph 6 a – c and included an attached Assessment of Environmental Effects (AEE) for a variation to a condition of the consent notice. I return to those matters later.

Decisions

14. In terms of the matters before me, I have been assisted in reaching my procedural decisions by Counsel for the Applicant, the submitters, the section 42A Reporting officer, and the independent legal advisor. In addition, I have carefully considered all of the matters raised by the parties in the information provided.
15. Firstly, I consider that I need to address the question as to the application before me, does 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?

⁸ Applicant’s further submissions addressing consent notice condition, Mr A Young, dated 30 October 2025, Paras 4 -6

16. I have considered the arguments for and against of Mr Young for the Applicant and Mr Laing's independent legal advice. On balance, I find application for a boundary adjustment is the subdivision of land under section 218(1) of the RMA and hence requires a subdivision consent under section 11(1) of the RMA.
17. I accept the opinion of Mr Laing, that the application falls within the plain meaning of the subdivision of land under section 218(1)(a) of the RMA and that the exceptions advanced by in the Applicant in terms of the caselaw do not apply.⁹ In particular, I find that the facts and circumstances of the application before me, are different to that addressed in the Spark New Zealand Trading case¹⁰; the latter being a declaration application of different facts rather than a substantive subdivision of land consent application.
18. The second question to be answered is, does the consent notice No 7890638 (the consent notice), registered against the records of title for Lots 31 and 32 DP 385658, prevent the application proceeding without the consent notice being first varied or cancelled?
19. Again, I have summarised the positions and reasoning advanced by the Applicant and the answers to my question on this matter from the independent legal advisor above.
20. In this case, I find that the consent notice does prevent the boundary adjustment and proposed disposition of allotments and as such, the consent notice is required to be varied or cancelled before the application can proceed further. I accept the opinion of Mr Laing as to the ordinary meaning of the wording of the consent notice and reasons set out in his legal opinion.¹¹ I am not persuaded by the reading down of the consent notice as advanced by the Applicant.
21. In summary, I find the substantive application for the boundary adjustment being subdivision of land is subdivision consent under the RMA and that an application is required to vary or cancel the consent notice before the application can proceed.

Next Steps

22. As signalled above, the Applicant set out that should I agree with Mr Laing's opinion, that the commissioner can vary the consent notice condition at the current stage of proceeding, that the Applicant can apply to have the condition varied at the current stage of proceeding and various alternatives including considering the subdivision application and section 221 of the RMA application together, or granting the substantive application and including a condition precedent.¹² I record that the Applicant's response of 30 October 2025, included an attached AEE in relation to the condition variation.
23. To be clear, I did not seek this component of the submissions from the Applicant.

⁹ Legal Advice, Duncan Laing, Dated 14 October 2025, Paras 6 - 42

¹⁰ *Spark New Zealand Trading Ltd v Clearspan Property Assets Ltd* [2018] 3 NZLR 661 (CA)

¹¹ Legal Advice, Duncan Laing, Dated 14 October 2025, Paras 43-65

¹² Applicant's further submissions addressing consent notice condition, Mr A Young, dated 30 October 2025, Paras 9 - 33

24. Nonetheless, I have carefully considered whether I have any jurisdiction to take further steps in relation to the variation of the consent notice and in doing so I have reviewed the delegations under section 34A of the RMA from the Council to myself in terms of the present hearing.
25. I have formed the view that I do not have jurisdiction to vary the consent notice conditions as part of the current application for subdivision consent. While I accept that in some circumstances an amendment or modification to a resource consent application may fall within the scope of such an application, the present situation is quite different from a procedural point of view. Further, given the express terms of the consent notice I do not consider that I have jurisdiction to grant the subdivision consent for a boundary adjustment subject to a condition precedent or advice note.
26. Section 221 of the RMA is a separate and discrete part of the Act, and contains a specific statutory process for the varying or cancellation of a consent notice. It requires assessment as to the application's acceptance for processing under section 88, a decision as to notification under section 95 and assessment in terms of a section 42A report, before the matters under section 104 could be considered.
27. In addition, I find that it is not within the scope of my delegations to deal with a section 221 application under the RMA. My delegations would need to be amended if I was to have jurisdiction to consider any section 221 application in the future.
28. Having found that I do not have delegation to consider the application for variation of the consent notice, the current application for a subdivision consent cannot advance for the time being.
29. It is a matter for the Applicant as to how they wish to proceed. Any next steps would be appropriately advanced through liaison with Council officers.
30. Any correspondence to the Commissioner should be directed through Claire Kelly, Governance Advisor at NPDC (claire.kelly@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 18 November 2025