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**Before New Plymouth District Council**  
**Independent Commissioner Mark St Clair**

**IN THE MATTER** of an application for resource consents LUC24/48662 and SUB24/50201 1 and 9 Washer Road, Omata

Washer Family Trust Limited  
**Applicant**

3 October 2025

## SUBMISSIONS ON BEHALF OF WASHER FAMILY TRUST ON PROCEDURAL QUESTION REGARDING RMA, S 218 AND TAPUE COUNTRY ESTATE CONSENT NOTICES

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### 1. Introduction

- 1.1 The Washer Family Trust seeks resource consent from New Plymouth District Council to adjust a property boundary between Lot 20 and Lot 31 at Tapuae Country Estate, a high-end lifestyle farm-park subdivision, in Omata.<sup>1</sup>
- 1.2 Following the 2 October 2025 hearing at New Plymouth District Council before Independent Commission Mark St Clair, further submissions were requested regarding the effect of the terms of Lot 31's consent notice. The issue arose following the Commissioner's issuance of "Minute 3" on 1 October 2025 — shortly before the hearing.
- 1.3 These written submissions outline the Applicant's position on the procedural issues discussed.
- 1.4 In summary, the application to adjust a boundary is not further subdivision on the terms of Lot 31's consent notice. No new allotments are being created. The number of farm balance lots will remain the same, as will the number of residential dwelling lots. Appellate guidance demonstrates

<sup>1</sup> Expert Planning Statement of Christopher Rendall, 17 September 2025 ("**CR**") at [24].

“subdivision” under s 218 of the RMA is concerned with transactions that have environmental effects. The application does not have any adverse environmental effects. The consent notice on Lot 31 does not prohibit the boundary adjustment sought by the Washer Family Trust Limited.

1.5 Alternatively, if the wording “no further subdivision” prohibits the boundary adjustment (even though no new lots are created, and the same number of lots will remain at the Estate) then NPDC and the Applicant can reach an agreement to vary or cancel the condition.

1.6 As a further alternative, the Applicant may make an application under s 221 of the RMA to vary or cancel the consent notice condition. This application should proceed on a non-notified basis or with the notification already given, since the substance of the application has already been well signalled to all parties notified of the original application (which was for a discretionary consent, and identified all material matters of the project for consideration).

## 2. The record of title does not restrict boundary adjustment — interpreting the consent

2.1 The consent notice applying to lot 31 was created to prevent the balance lot, which contains the dry stock bull farm operated by Washer & Co, from being subdivided into more lots. The purpose was to preserve the balance lot as the farm, in the farm-park.

2.2 The consent notice’s terms were not intended to restrict boundary adjustments that responded to new circumstances. That is apparent from the condition not being part of the Estate’s earlier consents — indicating its purpose was to prevent further lots, and consents should not be given a technical or unduly restrictive reading.

2.3 The developer always intended the Estate would comprise separate residential dwelling lots, and no more.<sup>2</sup> The prohibition of further subdivision was drafted in order to stop further subdivision, that would

<sup>2</sup> LINZ Instrument 7890638.42 (Encumbrance) at page 61, [2.1]. This Encumbrance does not restrict or inhibit subdivision.

lead to the subdivision having more than the initially contemplated (and consented) 30 dwelling lots. John Washer states in his evidence, that:<sup>3</sup>

All property owners at the estate bought into Tapuae because it was a Farm Park. They were attracted to the estate knowing that the bespoke legal structure prevented increasing the number of houses beyond the 30 that were originally consented.

- 2.4 The boundary adjustment will not increase the number of lots. New Plymouth District Council's s 42A expert reporting planner, Campbell Robinson states:<sup>4</sup>

The proposed boundary configuration results in no net increase in the number of lots thereby avoiding fragmentation of highly productive land as directed under Clause 3.8 of the NPS

- 2.5 The initial consent documentation does not contain any prohibitions on further subdivision. The restriction on further subdivision was introduced at the conclusion of the Estate's subdivision process, after the contemplated 30 lots were created.
- 2.6 Lot 20's consent notice **does not** contain a condition prohibiting further subdivision.
- 2.7 The prohibition on further subdivision is first introduced in the resource consent decision of Councillor M Merrick — Hearing Commission Chairman (dated 21 July 2006 ). The document states (at condition 7):<sup>5</sup>

**Limitations as to Further Subdivision**

7. Lots 31 and 32 shall not be further subdivided and cannot be disposed other than in conjunction with lots 1 to 30.

- 2.8 The consent notice for Lot 31 reflects this condition and states:<sup>6</sup>

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

- 2.9 By its nature, a consent notice reflects a condition of a subdivision consent to be complied with on an ongoing basis. The consent notice must be understood in light of the resource consent.

<sup>3</sup> Statement of John Charles Washer, signed 17 September 2025 (filed as part of the resource consent application process) at [12].

<sup>4</sup> Campbell Robinson, s 42A report regarding Washer Family Trust Ltd's application for resource consent, 10 September 2024 at [76].

<sup>5</sup> File titled: "Additional 4 lots.pdf". Unsigned resource consent decision of Councillor M Merrick — Hearing Commission Chairman (dated 21 July 2006)

<sup>6</sup> Consent Notice Pursuant to Section 221 of the Resource Management Act 1991, in the matter of Lot 2 DP 20763, dated 7 March 2008, Signed by Frank Versteeg, Principal Administrative Officer of the New Plymouth District Council.

2.10 The Environment Court has stated that:<sup>7</sup>

If subdivision was to be recognised by the RMA as a purely technical matter of translating survey points on the land onto paper then in my view the subject would have been dealt with in a self-contained part — such as Part X of the RMA, but with no reference to land use matters; and without reference to subdivision in section 6 of the Act. The reference in section 6 to “inappropriate” subdivision suggests that the RMA recognises that subdivision of land does have effects on the management of resources.

And

the legality of land use conditions on a subdivision consent is more a question of reasonableness in the circumstances than of a sharp definition of powers

2.11 On a plain, non-technical reading – the phrase “no further subdivision” in Lot 31’s consent notice can be interpreted as a prohibition on the creation of **additional lots**. No new lots are proposed in the application. It is not further subdivision. The terms of Lot 31’s consent notice do not need to be varied (under RMA, s 221).

### 3. Consent notice does not prohibit boundary adjustment when viewing the definition of “subdivision” through the terms’ legal treatment under RMA s 218

3.1 To support the interpretation detailed above, the way the term “subdivision” in the RMA has been interpreted by Courts, supports the proposition that a boundary change, as proposed, which has no environmental effects, is not subdivision for the purposes of the RMA.

3.2 Without reference to any caselaw, the submitters baldly state that the boundary adjustment under s 218 is a subdivision.

3.3 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.<sup>8</sup> Consideration of the purpose is a cross-check rather than the starting point.<sup>9</sup>

<sup>7</sup> *Lakes District Rural Landowners Society Incorporated v Queenstown Lakes District Council* [2001] ELHNZ 235 at [38] and [43].

<sup>8</sup> Legislation Act 2019, s 10. *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22]; *Spark New Zealand Trading Ltd v Clearspan Property Assets Ltd* [2018] NZCA 248, [2018] 3 NZLR 661 at [22].

<sup>9</sup> Legislation Act 2019, s 10.

- 3.4 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.<sup>10</sup>
- 3.5 In very broad terms, this means 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.<sup>11</sup>
- 3.6 Here, the boundary change is not a transactional<sup>12</sup> subdivision under RMA, s 218. As the Court of Appeal has said, it is reasonably clear 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.<sup>13</sup> Two matters which must be recognised and provided for as matters of national importance are:
- “(a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them **from inappropriate subdivision**, use, and development:
- (b) The protection of outstanding natural features and landscapes **from inappropriate subdivision**, use, and development:”
- 3.7 Where a boundary adjustment is just lines on a plan and no new use, a council cannot consider the issue in the same way as it would for a new use as there are no real effects.<sup>14</sup> Or the real effect, if any is from the land use activity, rather than from the subdivision.
- 3.8 Or put another way, where the use of land is protected as an existing use under s 10, then it is at least doubtful how far the consent authority can reasonably go in requiring that use to be assessed as if it were a new use.<sup>15</sup>

<sup>10</sup> *Spark New Zealand Trading Ltd v Clearspan Property Assets Ltd* [2018] 3 NZLR 661(CA) at [22]-[23].

<sup>11</sup> *Re McKay* [2019] NZRMA 134 at [31].

<sup>12</sup> *Spark New Zealand Trading Ltd v Clearspan Property Assets Ltd* [2018] 3 NZLR 661(CA) at [24].

<sup>13</sup> *Spark New Zealand Trading Ltd v Clearspan Property Assets Ltd* [2018] 3 NZLR 661(CA) at [24].

<sup>14</sup> *Re McKay* [2019] NZRMA 134 at [55].

<sup>15</sup> *Re McKay* [2019] NZRMA 134 at [51].

- 3.9 In *Paynter Horticultural Enterprises Ltd v Hastings District* (1993) 1AELRNZ 364, the Planning Tribunal stated of subdivision under the RMA:<sup>16</sup>

We further record that subdivision is deemed to be an "activity" and thus fits within the provisions of the RM Act. Whilst we concede that some subdivisions may physically constitute an activity in the true sense of that word involving as they may roading works, earthworks, creation of building platforms etc., **it is difficult to see how a readjustment of lines upon a plan, which is what is here suggested, is the type of activity contemplated by the RM Act. It is an artificial use of the word "activity" when that word is applied to resource use and management.** (emphasis added)

- 3.10 The Court of Appeal has recently stated that Section 218 of the RMA (subdivision) is not concerned with:

"land transactions unlikely to intensify development, and thereby neither increase the density of occupation nor impact adversely on infrastructure and other amenities."<sup>17</sup>

- 3.11 The application will not increase the density of occupation or impact adversely on infrastructure and other amenities. NPDC's reporting s 42A planner accepts this — Mr Robinson, for example, states:<sup>18</sup>

I remain of the view that any effect on the key characteristics of the rural character would be maintained and that effects on rural character would be acceptable

- 3.12 In line with the approach taken by the Court of Appeal in *Spark* and the Environment Court in *Re McKay* the boundary adjustment does not engage any environmental matter requiring the prohibition on further subdivision in Lot 31's consent notice.

#### 4. **Alternatively, if "no further subdivision" in balance lot consent notice prohibits a boundary adjustment, NPDC can review the condition (of its own volition) or applicant may apply to vary condition**

- 4.1 Section 221(3) provides that at any time after the deposit of the survey plan:

(a) the owner may apply to a territorial authority to vary or cancel any condition specified in a consent notice:

(b) the territorial authority may review any condition specified in a consent notice and vary or cancel the condition.

<sup>16</sup> *Paynter Horticultural Enterprises Ltd v Hastings District* (1993) 1AELRNZ 364 at 367.

<sup>17</sup> *Spark New Zealand Trading Ltd v Clearspan Property Assets Ltd* [2018] 3 NZLR 661(CA) at [24].

<sup>18</sup> Campbell Robinson, s 42A report regarding Washer Family Trust Ltd's application for resource consent, 10 September 2024 at [54], see also: [56] [74]

4.2 Either the applicant may make an application to vary the consent notice if required, or NPDC may review the condition prohibiting any further subdivision and vary or cancel the condition. Either matter could occur separately from this application.

4.3 The Court of Appeal has stated that the land owner and council can enter into an agreement to change a consent notice condition under s 221(3):<sup>19</sup>

following deposit of the plan a landowner and territorial authority may agree between themselves to vary or cancel a condition of subdivision consent whatever its provenance. That meaning is certainly consistent with contextual indications that the provision was to provide greater flexibility.

4.4 Consent notices can be altered where there is a material change in circumstances.<sup>20</sup>

4.5 Presently the consent notice frustrates the Applicant's ability to provide for their social and economic wellbeing — which is a critical purpose of the RMA.<sup>21</sup> The consent notice also contributes to an inefficient use and development of natural and physical resources,<sup>22</sup> and increases natural hazard risk compared to the proposal in the application.<sup>23</sup>

4.6 The High Court in *Ballantyne Barker Holdings* stated:<sup>24</sup>

a consent notice ... should only be altered when there is a material change in circumstances ... which means the consent notice condition no longer achieves, but rather obstructs, the sustainable management purposes of the RMA. **In such circumstances the ability to vary or cancel the consent notice condition can hardly be seen as objectionable.** (emphasis added)

4.7 *Ballantyne Barker Holdings* also cites *Foster*,<sup>25</sup> that in considering whether to vary or cancel a consent notice, criteria of some relevance include the circumstances in which the condition was imposed, the environmental values it sought to protect, and purposes of the RMA. As outlined above, the present consent notice was intended to address the creation of new

<sup>19</sup> *Kapiti Environmental Action Incorporated v Frandi* [2003] 2 NZLR 338 (CA) at [38].

<sup>20</sup> *Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council* [2019] NZHC 2844.

<sup>21</sup> Resource Management Act 1991, s 5(2) "In [the RMA], sustainable management means managing the ... development ... of natural and physical resources in a way ... which enables people ... to provide for their ... economic ... well-being".

<sup>22</sup> Resource Management Act 1991, s 7(b).

<sup>23</sup> Expert Geotechnical Statement of Kristel Franklin, 17 September 2025: E.g., at [38]: "*The application's purpose is to avoid the natural hazard, and not accelerate or worsen an existing natural hazard, as required under the Building Act (2004, ss 71 and 72*".

<sup>24</sup> *Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council* [2019] NZHC 2844 at [45].

<sup>25</sup> *Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council* [2019] NZHC 2844 at [42], referring to *Foster v Rodney District Council* [2010] NZRMA 159 at [9].

residential dwellings, and the associated environmental effects. It was not intended to preclude a boundary adjustment of this nature and so key criteria for removal are met.

- 4.8 The Environment Court stated in *McKinlay Family Trust*,<sup>26</sup> in a case regarding that:<sup>27</sup>

Conditions should only be set aside when there are clear benefits to the environment and to the persons who have acted in reliance on them.

- 4.9 As submitted at the substantive resource consent hearing, and supported by Kristel Franklin's expert geotechnical evidence, varying the consent notice will allow consideration of the substantive application, which will have positive environmental effects by removing natural hazard risk.<sup>28</sup>
- 4.10 The boundary adjustment directly responds to geotechnical instability by relocating the building platform to a more stable location, thereby avoiding risk to people and property (NP PODP, SUB-P3(1) and (2)).
- 4.11 The Environment Court in *Drach v Tasman District Council* has held that:<sup>29</sup> "a change in circumstances' can encompass ... changes to the physical environment". Here the physical environment of Lot 20 has changed through the natural land instability.
- 4.12 That is also a change in circumstances justifying variation or cancellation of the consent notice condition.
- 4.13 Variation or cancellation of the consent notice is necessary to meet the RMA's purpose otherwise there is an inefficient use of physical resources, a key matter for consideration under s 7(b) of the RMA.

<sup>26</sup> In that case, the Trust sought consent to subdivide a lot of some 1.5 hectares into three lots. A consent notice, placed on the title following a record of determination issued by the Environment Court, prevented subdivision of the lot.

<sup>27</sup> *McKinlay Family Trust v Tauranga City Council* EnvC Auckland A119/08, 29 October 2008 at [52].

<sup>28</sup> Expert Geotechnical Statement of Kristel Franklin, 17 September 2025: E.g., at [38]: "*The application's purpose is to avoid the natural hazard, and not accelerate or worsen an existing natural hazard, as required under the Building Act (2004, ss 71 and 72*".

<sup>29</sup> *Drach v Tasman District Council* [2021] NZEnvC 118 at [25].

5. **If a s 221 application is required — the consent notice variation application should proceed on non-notified basis, there are no “affected” people**

- 5.1 RMA, s 95E(1) states: “a person is an **affected person** if the consent authority decides that the activity’s adverse effects on the person are minor or more than minor (but are not less than minor).”
- 5.2 The applicant submits there are no affected people in relation to a s 221 application, and the application should proceed on a non-notified basis. As canvassed at the council hearing before Commissioner Mark St Clair on 2 October 2025, it is clear the application for resource consent had no genuine resource management effects on the submitters who opposed the application.
- 5.3 The reporting s 42A planner, Campbell Robinson stated that there was amenity effect on the opposing submitters “personally”, even though there was no amenity effect impact on owners who had provided APA approval. The applicant commends its written submissions, filed on 1 October 2025 — and the points made by submitters show the application has no genuine amenity effects. The applicant notes amenity values are assessed objectively, and subjective views are not determinative.<sup>30</sup> If amenity was validly impacted by the application, objectively its effect could be measured objectively. At the hearing, Mr Robinson stated the amenity effect is only in relation to the opposing submitters. This suggests that whatever alleged perceived effect might exist, cannot be measured objectively and is not validly an amenity effect.
- 5.4 “Effect” is concerned directly with the natural and physical resources and the environment in which they exist<sup>31</sup> — ill-founded perceptions do not fall within the RMA’s definition of effect.<sup>32</sup> Discomfort alone does not amount to an adverse effect on amenity values under the RMA.<sup>33</sup> Otherwise:<sup>34</sup> “any proposal would be vulnerable to the discomforts of its opponents no

<sup>30</sup> *SKP v Auckland Council* [2018] NZEnvC at [205] agreeing with the environment court in *Schofield v Auckland Council* [2012] NZEnvC 68 at [51].

<sup>31</sup> As above.

<sup>32</sup> *Living in Hope Inc v Tasman DC* [2011] NZEnvC 157 at [1], [124] and [211]. Approved in *SKP Incorporated v Auckland Council* [2018] NZEnvC 81 at [249].

<sup>33</sup> At [124] and [211].

<sup>34</sup> At [124].

matter how irrational or ill-founded those discomforts might be.” Resource management planning must be based on “realistic” scenarios.<sup>35</sup>

- 5.5 Evidence that submitters would feel discomfort, depression and sadness at the thought of a particular activity occurring in their neighbourhood does not constitute an adverse “effect” which a consent authority may consider in determining this application.<sup>36</sup>
- 5.6 The applicant highlights the concessions made by Mr Robinson at the hearing, that in light of the evidence heard before the commissioner, SUB-P15: “Ensure that the subdivision in the Rural Lifestyle or Rural Production zone maintains or enhances the attributes that contribute to rural character and amenity values” — Mr Robinson said the application would not impact the key rural character and amenity value aspects listed at 1-5 of SUB-P15.
- 5.7 This demonstrates there are no “affected” people to be notified. In any event, all potentially affected persons have been notified through this current process and so have had their opportunity to participate in the substance of the application.

## 6. Conclusion


- 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,

<sup>35</sup> *Creswick Valley Residents’ Association Incorporated v Wellington City Council* [2015] ELHNZ 204 at [2-30].

<sup>36</sup> *SKP Incorporated v Auckland Council* [2018] NZEnvC 81 at [249].

the change or cancellation should proceed on a non-notified basis, as there are no affected parties in terms of the RMA.

Dated 3 October 2025

  
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**A Young**

Representative of the Applicants