

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