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SUBDIVISION—A VENDOR’S PERSPECTIVE

WHO SHOULD YOU CONTACT?

Before taking any steps in respect of a proposed subdivision, including approaching a surveyor, you should approach your lawyer or accountant to ascertain whether there are any tax issues involved in the subdivision of your land. Income tax may be payable in respect of the net profit made depending upon a number of tax issues including how long you have owned the land. Once these tax issues have been clarified and you wish to proceed, a surveyor should be involved, as a plan of the proposed subdivision will be required by the local authority at the initial application for Resource Consent. Eventually the surveyor will be responsible for obtaining Council’s approval to the formal plan of subdivision.

WHY SUBDIVIDE?

Subdivision is the process of dividing a larger area of land into smaller areas or Lots. These smaller Lots can then be sold, providing an effective way for you to increase the value of a large landholding and ensuring that the purchaser/s of the subdivided Lot/s get a smaller landholding that will be suitable for their particular purposes.

HOW DO YOU KNOW WHETHER YOU CAN SUBDIVIDE YOUR PROPERTY?

The Resource Management Act 1991 (“the Act”) provides that you can only subdivide if subdivision of the land is permitted under the District Plan, or proposed District Plan, for the Land District in which the land is situated. If a proposed subdivision fails to comply with this provision, or fails to fall within a limited range of exceptions in the Act, then you will need to obtain a resource consent in order for the subdivision to proceed.

WHAT IS INVOLVED IN OBTAINING A RESOURCE CONSENT?

Owners of land as well as prospective purchasers are entitled to apply for a Resource Consent in respect of a proposed subdivision. Application is generally made to the local District Council ("Council"). More complex subdivisions, for example those involving coastal land, require Regional Council approval.

As well as providing general information regarding the nature of the activity for which consent is sought and the effects that the activity may have on the environment, it is necessary to provide specific information relating to the proposed subdivision, for example information defining the position of proposed boundaries and the areas of all proposed Lots.

CAN A COUNCIL CONSENT SUBJECT TO CONDITIONS?

Assuming Council is satisfied with the application, they will either grant consent or grant consent subject to certain conditions. Conditions should be fairly and reasonably related to the subdivision. Examples of common conditions include the requirement by Council of payment for and construction of roads, stormwater, sewage, water and/or gas pipelines and other services necessary for the proposed new lots.

As subdivision can be complex, it is not always simply a matter of obtaining resource consent to ensure a subdivision will proceed. In certain circumstances it may be necessary to obtain a Completion Certificate or provide a bond in respect of work that remains to be done but is not essential to the creation of the new Lots. We are able to advise on the most appropriate method of obtaining Council consent and prepare all necessary documentation in respect of an application.

WHAT DO YOU DO ONCE YOU HAVE CONSENT?

As discussed, the process of subdivision involves the creation of new titles to the subdivided land. Regardless of size, each Lot

requires a legal title to evidence ownership and to record any legal interests in respect of that particular parcel of land. Once Resource Consent is obtained from the local authority, the surveyor will be required to complete a subdivisional plan and you will need to carry out all work required by the Resource Consent. The local authority will then be required to confirm that the Resource Consent has been attended to. The plan is then lodged for survey approval and then with Land Information New Zealand and new titles are issued for each subdivided lot.

The plan must conform with the Resource Consent obtained from the local authority and show any easements over new Lots. An easement is a right to do something in connection with another person's land which would otherwise be prohibited. Common examples include the right to drain sewage or convey water through land. Easements may be required by the local authority or may already exist over the land. We are able to advise as to relevance and effect.

WHAT DO WE DO?

The subdivision process can be time consuming, complex and contains many legal pitfalls. A large subdivision may involve the District Council, banks, purchasers and their solicitors, real estate agents and neighbouring owners of the land intended to be subdivided. These parties all have different interests that need to be taken into account.

Aside from the preparation of the various legal documents needed for a successful subdivision, we are able to assist with negotiations between the parties affected by a subdivision and advise as to the best legal methods for implementing your particular vision for the subdivided land. This may include registering covenants over the land to protect the purpose and vision of the subdivision or ensuring that appropriate legal structures are in place.

We are happy to advise on any of the above matters.

SUBDIVISION – A PURCHASER’S PERSPECTIVE

INTRODUCTION

Most people think that buying bare land should be fairly straight forward. However, if the purchase of the bare land is subject to the Vendor first completing a subdivision and obtaining a new Certificate of Title for the section there are a number of issues that purchasers need to be aware of. You should always contact your solicitor for advice prior to signing an Agreement for Sale and Purchase.

WHAT DO YOU NEED TO WATCH FOR WHEN PURCHASING?

When deciding on a section to buy there are a number of practical things to watch for, some more obvious than others.

SEARCH OF LEGAL TITLE

You solicitor will be able to obtain a search of the existing Certificate of Title for the larger piece of land that is to be subdivided (and of which the section you are purchasing forms part of). You will need to check whether there are any existing easements, restrictions, consent notices, land covenants or other encumbrances that affect the property. Often the existing easements are not surrendered prior to the new title issuing which means you will be bound by them together with any new easements, restrictions or covenants which are required for completion of the subdivision.

EASEMENTS

It is important to make sure that you know who owns all rights of access and where water, drainage, power and telephone lines have been laid. If these appear to cross another property before they reach your property, then you will want to be sure that proper legal easements are in place. If that is not the case you may find that your neighbour can prevent your use of these services which cross their property. The existence of any easements, restrictions, encumbrances or land covenants may restrict the position in which

you can site any building on the land. You will also want to check any maintenance and repair obligations in respect of any easements registered against the title.

COVENANTS

In larger subdivisions, you will commonly find that the developer of the subdivision will require all purchasers to agree to be bound by various land covenants. The land covenants set out what you can and can't do and basically restrict your use of the land. The land covenants are registered against all titles within the subdivision and will bind all subsequent purchasers. Common forms of land covenants include restrictions on the type of dwelling that you can erect on the land, height restrictions, length of time within which the construction of the dwelling must be completed, and restrictions on your ability to further subdivide or erect more than one dwelling on the land.

WHAT DOES THE AGREEMENT FOR SALE AND PURCHASE NEED TO COVER?

When buying a property that is subject to title being issued there are several issues that you will need to consider. You should discuss with your solicitor whether any of the following special conditions are required to be inserted into the Agreement for Sale and Purchase:

- A clause requiring the Vendor to proceed with all diligence to apply to the Local Authority for a Resource Consent to carry out the subdivision. All costs in respect of the completion of the subdivision should be at the Vendor's expense.
- If Resource Consent has been granted, a copy of the Resource Consent should be attached to the agreement and you should approve the terms of your Resource Consent as it will affect the lot you are purchasing.
- Usually at the time of signing the Agreement, the Vendor can only provide a scheme plan of the subdivision. The surveyor

will then prepare a final plan of survey to submit to the Local Authority and Land Information New Zealand for final approval.

- Upon a final survey being conducted the areas of each of the Lots within the subdivision may change. This could mean the size of the section that you have agreed to purchase is less than you originally expected. Any reduction in the size of the section could decrease the value of the section and as a result, you might like to consider a provision in the Agreement to provide that if the area of the Lot reduces by more than a certain percentage that the purchase price will decrease in proportion to the reduced area.
- Subdivisions can often be a lengthy process. There are no guarantees as to how long a subdivision will take to complete. Unless you insert a provision in the Agreement to make the contract subject to title being issued by a certain date, you could be bound to continue with the purchase for a period of up to two years following the date the Resource Consent has been granted or one year after the date of the agreement, whichever is the later.
- The contract should be subject to you approving any easements, covenants, restrictions, encumbrances and consent notices to be registered on the title.
- The contract should also be conditional with you being satisfied with the results of an engineers report and/or soil test report. The soil report should indicate whether the land will be suitable for building on.
- We also advise client's to obtain a Land Information Memorandum report (LIM). The LIM report is a report which is prepared by the Local Authority and contains any relevant information that they hold on their property file. The LIM should detail what building consents and building permits have been obtained for the property, whether any fill has been placed on the property, whether the property is subject to ponding, flooding, earthquakes and any other notable characteristics of

the property to which the Council is aware. The cost of obtaining a LIM report is relatively minimal when considered in light of the potential risk and cost that you could incur if you buy a section which is not suitable for the purpose for which you are buying the section.

- You should check as to whether the Vendor will be responsible for connecting telephones, power, electricity, water and any other services to the property and also whether it is your responsibility to erect a boundary fence.
- The contract should also be conditional upon you obtaining written confirmation of finance from your lender.

As you can see from the above discussion, purchasing a section which is subject to title being issued is not at all straight forward. It is most important that you conduct a detailed investigation of the property including all legal issues prior to entering into an Agreement for Sale and Purchase. We are happy give you any further guidance and advice on these matters.

Please call this office if you would like further information on any guides prepared by this firm. Copies are also available from our website.

- *Asset Protection and Residential Care Subsidies*
- *Business Grants & Assistance*
- *Buying or Setting Up a Small Business*
- *Charities*
- *Companies Act 1993*
- *Consumer Guarantees Act*
- *Credit (Repossession) Act 1997*
- *De Facto Property Rights*
- *Employment Law*
- *Enduring Powers of Attorney*
- *Fair Trading Act 1993*
- *Family Trust*
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THE LAWYERS

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