



# GUIDE TO SUBDIVISIONS

November 2011

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## SUBDIVISION: A VENDOR'S PERSPECTIVE

### WHY SUBDIVIDE?

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Subdivision is defined by the Resource Management Act 1991 (“RMA”) as the division of an allotment by an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of the allotment. Leases and applications for separate unit titles can also be considered subdivisions under the RMA.

There are a number of reasons for considering subdivision, such as financial or family reasons. Subdivisions can enable landowners to make their land more profitable or better suited for their purposes. For instance, a boundary adjustment may enable land to be more effectively farmed or subdivision of a farm may allow a retiring couple to retain ownership of their family home but sell off the remainder of the working farm.

### WHO SHOULD YOU CONTACT?

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If you are thinking about subdividing it is important that you properly inform yourself of all of the potential implications of a subdivision. This typically necessitates consulting with various professionals. For instance, an accountant will be able to advise you on 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 and this could affect the profitability or otherwise of the proposed subdivision. Your lawyer will be able to advise you on whether there are any issues with your title and in respect of the district plan rules you will need to comply with. Your surveyor will be able to prepare a plan of the proposed subdivision. Having a good team of people involved will assist you to navigate through the subdivision process smoothly.

### HOW DO YOU KNOW WHETHER YOU CAN SUBDIVIDE YOUR PROPERTY?

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Under the RMA, activities are classified as permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited. In order to ascertain the activity status of your proposed subdivision, you will need to review the relevant district plan which applies in your area. If your subdivision is not a permitted activity, and in most cases it will not be, you will need to apply to your local district council (the “Council”) for resource consent to subdivide land. More complex subdivisions, for example those involving coastal land or access over waterways may also require regional council approval.

Your lawyer will be able to advise you on the rules which are likely to be applicable to your proposed subdivision and on the criteria which you may need to comply with in order to obtain resource consent. This can include matters such as the size and shape of the proposed allotments, proposed building platforms and sewage and stormwater drainage.

## THE SUBDIVISION PROCESS

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Once you have finalised your subdivision plan and application for consent, they can be lodged with the Council. The Council must then decide whether to publicly notify the application or not. If the application is publicly notified, this can mean that a hearing will be held and the process can be prolonged if affected persons oppose your application. The Council may also decide that more information is required before they can assess the application and request further information from you, which can also result in delays.

After the application has been assessed and assuming the application is approved, consent is usually granted subject to certain conditions. Conditions should fairly and reasonably relate to the subdivision. Examples of common conditions include the requirement to provide access, stormwater, sewage and/or water services, and building platforms.

## WHAT DO YOU DO ONCE YOU HAVE CONSENT?

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Once resource consent has been granted, you will need to arrange for your surveyor to complete the necessary survey work and the survey plan and you will need to carry out all the work required by the conditions of the resource consent. When the work has been completed, you will need to apply for section 223 and 224 RMA certificates from the Council. The certificates confirm that the Council is satisfied that the survey plan conforms with the subdivision consent and that the conditions of consent have been complied with. The certificates are necessary so that your survey plan can be deposited with the Registrar General of Land and so that titles can issue.

As subdivisions can be complex and involve a wide range of conditions, 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 and provide a bond in respect of work that remains to be done but is not essential to the creation of the new lots.

## WHAT DO WE, AS YOUR LAWYERS, DO?

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The subdivision process can be time consuming, complex and contains many legal pitfalls. A large subdivision is likely to involve negotiations with district and regional councils, 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.

As well as assisting with these negotiations and advising you in respect of your legal rights and the applicable district and/or regional plan rules, we prepare the various legal documents needed for a successful subdivision. We are also able to advise on the best legal methods for implementing your particular vision. This may include registering covenants over the land to protect certain features on the land or ensuring that appropriate legal structures are in place. You should also give careful thought to the legal entity which applies for subdivision and which will ultimately own the land. Again this can involve various tax implications which we can advise you on.

## SUBDIVISION: A PURCHASER'S PERSPECTIVE

### INTRODUCTION

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It is commonly thought that purchasing a bare piece of land should be fairly straight forward. Unfortunately this is not always the case. If the purchase of the bare land is subject to the vendor first completing a subdivision and/or 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 lawyer for advice prior to signing an Agreement for Sale and Purchase.

### WHAT DO YOU NEED TO WATCH FOR WHEN PURCHASING?

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

#### Search the Certificate of Title

Your lawyer will be able to obtain a search of the existing certificate of title for the parent title that is to be subdivided, which your land forms part of. It is important to check whether there are any existing easements, restrictions, consent notices, land covenants or other encumbrances that affect the property. Often the existing easements and covenants 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 should also check any maintenance and repair obligations in respect of any easements registered against the title.

#### Covenants

In larger subdivisions, the developer of the subdivision may require all purchasers to agree to be bound by various land covenants. Land covenants essentially restrict what you can and can't do on your land. If the land you are considering buying is subject to a covenant, this will be registered against your title and it will bind all subsequent purchasers, which may also affect saleability. Common forms of land covenants include restrictions on the type of dwelling that you can erect on the land, height restrictions, the types of planting/landscaping that can occur and restrictions on your ability to further subdivide or the number of dwellings that may be erected on the land.

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

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There are a number of special conditions that should be considered before entering into an Agreement for Sale and Purchase for land for which title has not yet issued. These include:

- If resource consent has not been obtained, a clause requiring the vendor to proceed with all diligence to apply to the territorial 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 as it will affect the land you are purchasing.
- If a final survey plan has not been prepared at the time of signing the Agreement, the areas of each of the allotments within the subdivision may change once the final survey has been carried out. This could mean the size of the allotment that you have agreed to purchase is less than you originally expected, which in turn means the value of your allotment may have decreased. It is therefore advisable to include a clause in the Agreement which provides that if the area of the allotment reduces after the final survey has been carried out, that the purchase price will decrease proportionally to the reduced area.
- There are no guarantees as to how long a subdivision will take to complete and they can often take much longer than expected. To avoid being bound by an Agreement beyond the timeframe you want, clauses can be included to make the contract subject to title being issued by a certain date.
- Whether the vendor will be responsible for connecting telephones, power, electricity, water and any other services to the property and who has responsibility to erect boundary fences.
- An Agreement can be made conditional upon matters such as:
  - Your approval of any easements, covenants, restrictions, encumbrances and consent notices that are to be registered on the title.
  - An engineer's report and/or soil test report being obtained which confirms that the land will be suitable for building on or your desired purpose for the land.
  - Finance being obtained from your lender.
  - A Land Information Memorandum (LIM) report being obtained to your satisfaction. A LIM report is a report prepared by territorial authorities which contains any relevant information that they hold on their property file in relation to the land. The LIM should detail what building consents and building permits have been obtained for the land, whether any fill has been placed on the land, whether the land is subject to ponding, flooding, earthquakes and any other notable characteristics of the land which the Council is aware of. 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 land which is not ultimately suitable for your purposes.

## SUMMARY

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This guide summarises some of the issues you may face when contemplating a subdivision or purchasing land subject to a subdivision. It is important that you properly inform yourself of the potential implications to avoid disappointment, delay or cost blow outs. Our team is experienced in all aspects of subdivision and we can help you to successfully navigate through the subdivision process.

## HOW WE CAN HELP YOU

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Govett Quilliam is Taranaki's largest law firm. We have the people, the experience and the resources to assist you, whatever your case may be.

We have prepared this guide as a guideline to subdivisions. If you require further information, or have any questions about this guide please contact us.

Our Partners with experience in subdivisions are:



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

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