

What to Consider Before Undertaking a Subdivision

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Is your intended subdivision permitted within the area?

What you are allowed to do with your land depends on the relevant zoning under the local Council's District Plan. The Resource Management Act 1991 requires Councils to prepare these plans which (among other things) specify different zones and what activities may be undertaken in these zones. If your intended subdivision is classed by Council as a "Controlled Activity" within your zone, you must apply for resource consent which will be granted provided the subdivision meets the District Plan rules (such as allotment sizes and intended use of allotments). If your intended subdivision is classed by Council as a "Discretionary Activity" within your zone you must apply for a resource consent which will be issued at Council's sole discretion.

Have you engaged the services of a surveyor?

Along with engaging the services of a lawyer, a surveyor must also be engaged when undertaking a subdivision. Your surveyor will assess the site and advise on potential engineering or planning issues, prepare the relevant survey plans, and assist with your resource consent application and obtaining final subdivision sign off from Council.

Will your bank consent to the subdivision?

If there is a mortgage registered on your title in favour of your lender, then their consent will need to be obtained if you intend to register (or remove) certain instruments on the title like easements or land covenants. You should have a conversation with your mortgagee about their willingness to consent to a subdivision early to ensure no issues when applying for titles.

Do any instruments need to be surrendered from your title?

A careful review of your title/s is essential early in the subdivision process to ensure no barriers to your intended subdivision. Issues we have seen in the past include:

a. land covenants which outright prohibit further subdivision; or

b. easements which are no longer needed, or whose location needs to change.

In situations like these the consent of benefitted third parties is required to surrender the instruments. This can take some time to arrange and, if parties are unwilling to comply or too many parties are involved, applications may need to be made to the Court to extinguish

or modify the relevant instrument under section 317 of the Property Law Act 2007. Council will also need to approve the surrender of any easement instruments which have been registered on the title subject to section 243(a) of the Resource Management Act 1991.

Do instruments need to be registered on any neighbouring titles?

If, for example, services to the subdivision must pass over a neighbouring property you will need the consent of the neighbouring owner (and their mortgagee) to register any new easements over their property. You should be careful to rely on the verbal agreement of neighbours in these situations and always insist on entering into an Agreement to Grant Easement with any affected parties. This will ensure the subdivision is not delayed due to neighbours changing their mind when it comes to applying for titles.

Do you want to place any restrictions on the use of the newly created allotments?

As part of the subdivision you should consider whether you want to place restrictions on what can be brought onto the property, the style of dwelling/building that is built, or even the maximum allowed height of trees or structures on the new allotments. These restrictions can be registered by way of a land covenant and are a helpful way of ensuring certain standards are maintained and the look of the subdivision as a whole is not negatively impacted by a subsequent owner.

Obtaining specialist advice from your lawyer is essential to ensuring your subdivision proceeds smoothly, without surprises along the way. Here at CLM we have a team of subdivision experts, if you are thinking of undertaking a subdivision then please get in touch with us on 07 578 2099.