

What do you need to know if you are considering subdividing land

The Queenstown Lakes District Council Proposed District Plan is in the final stages of appeals being heard and is likely to be fully operative soon. Most areas will see notable changes from the previous rules, which may have many of you thinking about subdividing.

The first thing to consider is whether the land is capable of being subdivided. The record of title to the property is the first place to look to ensure there are no covenants (restrictions) preventing further subdivision of the land. It might be that you can't go any further unless you want to vary the covenant, which in most cases is costly, time consuming and in reality, is not possible due to the number of people that need to be involved. There may also be easements for services or rights of way running through your property which might mean further subdivision is impractical.

Next, familiarise yourself with the relevant chapter of the operative district plan. If you intend to do anything with your property (such as subdividing) that is not permitted by the district plan rules, you will first need to apply to council for a resource consent.

The district plan contains zone rules that determine what you can and can't do with your property. Different zone rules will apply to different areas within established towns and rural areas, so you need to make sure you know which rules apply to your property. The zone rules will also provide site density standards. For example, the site density standards might allow one residential unit (house) for every 300sqm of land area. Meaning, theoretically, you could divide a 900sqm section into three separate lots. Having said that, if the ultimate size of the new lots that you want to achieve isn't expressly allowed by the zone rules, that doesn't mean you can't do it. It just means the process for obtaining a resource consent will be more involved and is likely to be more expensive with no guarantee of success.

Just because someone has subdivided land close to you before, that doesn't mean you will be able to do the same. In Queenstown Lakes District, for example, older parts of the established townships have few, if any, restrictions recorded on the record of title. However, it is now usual to see land covenants preventing further subdivision registered on the record of title for properties in newer subdivisions, even if the district plan otherwise allows for further subdivision.

It is important to note that land covenants registered by developers at the time of subdivision are private covenants between land owners and generally do not involve council. As an example, it would be theoretically possible to be granted a subdivision resource consent by council even though there is a restrictive covenant registered on the record of title that prevents further subdivision. Thorough due diligence will prevent you from falling into this trap.

It is likely that you will have discussed your subdivision intentions with a surveyor at an early stage in the process. The surveyor will be responsible for surveying the legal boundaries of your property and preparing a subdivision plan. It may also be beneficial to discuss your intentions with a planner who can assist you in interpreting the relevant district plan rules. It is also important to involve your property lawyer as early in the process as possible. There is a general misconception that lawyers are only responsible for obtaining new titles at the end of the process. However, there is more to it than that and as well as doing a thorough check of the title for any privately registered covenants, your property lawyer will often help with aspects of the resource consent application to make sure the process at the end is as straightforward as possible.

After council grants a resource consent, you will receive a copy of the decision and you can then start working through the conditions and implement the consent. This will usually include physical works, such as roading and access, connections for power and telecommunications, as well as water, sewage and stormwater. If the property is rural, such connections may be expensive and it is likely that there will be no council infrastructure for water, sewage or stormwater.

Often council will require that certain conditions of your resource consent need to be complied with on an on-going basis after new titles have issued. If that is the case, those conditions will need to be recorded in a consent notice that will be registered on the new titles. Any future owners of the property will need to comply with those conditions at all times. Your lawyer or surveyor will prepare this for you, if it's required.

Once council is satisfied that the conditions of your resource consent have been met (aside from those that will be registered by way of consent notice), it will issue certificates known as "224c" and "223". This essentially means council is satisfied that you have met the required conditions of the resource consent and that the survey plan for the subdivision has been approved. By this stage, your lawyer will have finalised the legal documents (such as easements and covenants) that are required to be registered on the new titles. The subdivision survey plan (known as the "LT Plan") will also show any easements through the land, such as

rights of way, rights to convey services (such as water, telecommunications, electricity, sewage or stormwater), and also any restrictive land covenant areas that need to be defined. Your lawyer will then submit an application for new titles with Land Information New Zealand.

If the land that is being subdivided is close to your own home and you plan to stay put after the subdivision has been completed, you should carefully consider any restrictive covenants to future-proof your enjoyment of your property. Otherwise, you might find yourself with trees blocking your lake view, or a house built next door which is not to your taste with no ability to do anything about it. Restrictive covenants can be used to do many things, such as:

- limit building height and tree and shrub heights;
- prescribe specific building materials that can or cannot be used;
- prevent pre-fabricated or relocatable homes being used;
- limit certain activities that can be undertaken on the land that might cause a nuisance.

You should also consider whether or not you will have to pay tax on any profits made from selling the subdivided land if it is your intention to sell. The bright-line period for capital gains has now been extended to 5 years for any property purchased on and after 29 March 2018. If you purchased a property on or after that date and then sell it (meaning entering into an agreement to sell it) within a 5-year period there may be tax to pay. The tax rules for people in the business of property development and their associates are complex. There is no definitive answer to tax liability as it depends on individual circumstances. Making an appointment to sit down with your accountant early on in the due diligence stage would be time well spent.

If you are thinking of subdividing, contact one of the experts in the property team at TODD & WALKER Law for an initial consultation or contact us on 03 441 2743.