

2013

Plan Topics

Land - Subdivision



Subdivision

This guidance only includes changes to the RMA as a result of the Resource Management Amendment Act 2013 that are already in force. Part 3 of the Amendment Act will come into effect on 3 March 2015, which is 18 months from the date of Royal Assent (3 September 2013). For more information about the amendments please refer to the Ministry for the Environment's – Fact Sheets available from the [Ministry's website](#).

This guidance note provides an introduction to subdivision and the subdivision process under the Resource Management Act 1991 (RMA). It provides an overview of how subdivision can be managed in the district plan, including the development of objectives, policies and rules, and addresses the application of subdivision controls to address strategic planning issues.

This note emphasises that if you are intending to use subdivision controls as a method that you need to understand the effects of subdivision itself, and its relationship to potential changes in land use and subsequent environmental effects. Where subdivision controls are used as a method, plan provisions must be effective and robust given that all subdivision requires a resource consent, unless specifically permitted by a plan.



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Introduction to subdivision

What is subdivision?

Subdivision is essentially a process of dividing a parcel of land or a building into one or more further parcels, or changing an existing boundary location. Although subdivision does not itself alter the way land is used, those who subdivide land will almost inevitably be doing so to alter the land use. Subdivision is a very convenient time to address environmental impacts of intensification and change in land use, as it can be inefficient to impose controls through separate consents at a later stage.

Land subdivision creates separate and saleable certificates of title, which can define an existing interest in land (including buildings) and impose limitations on landowners or occupiers for how the land can be used or developed, through conditions and consent notices imposed under s108 and 220 of RMA. Subdivision also provides the opportunity for a council to require land to be vested and reserve and other financial contributions to be taken to provide necessary infrastructure.

Land is usually subdivided for one of the following purposes:

- to provide a legal title to an existing development with limited or no potential for further development (e.g. subdivisions around existing buildings, or boundary adjustments)
- to provide title to sites that have few or no adverse effects at the time of subdivision, but with a presumption that development (which may have effects) will follow subdivision (e.g. infill subdivisions)
- for large-scale development where substantial works are carried out as part of the subdivision and where adverse effects can and do occur (e.g. greenfield subdivisions). Land in New Zealand is owned in two different ways and these affect the way land is subdivided; [freehold](#) and [leasehold](#).

Subdivision under the RMA

Land subdivision under the RMA includes:

- the creation of separate fee-simple [allotments](#) with new certificates of title (freehold)
- the lease of land or buildings or both for 35 years or longer ([leasehold](#))
- the creation of a [unit title](#), [company lease](#), or [cross-lease](#).

Under the s11, no person may subdivide land unless the subdivision is expressly allowed by a rule in a plan or a resource consent, and a survey plan has been processed under Part 10 of the Act.

The critical definitions that relate to this process are:

- the [subdivision of land](#) (as defined by s218)
- an [allotment](#)
- the [survey plan](#).



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However, there are a number of exemptions from these provisions, which means that not all subdivisions are subject to the RMA.

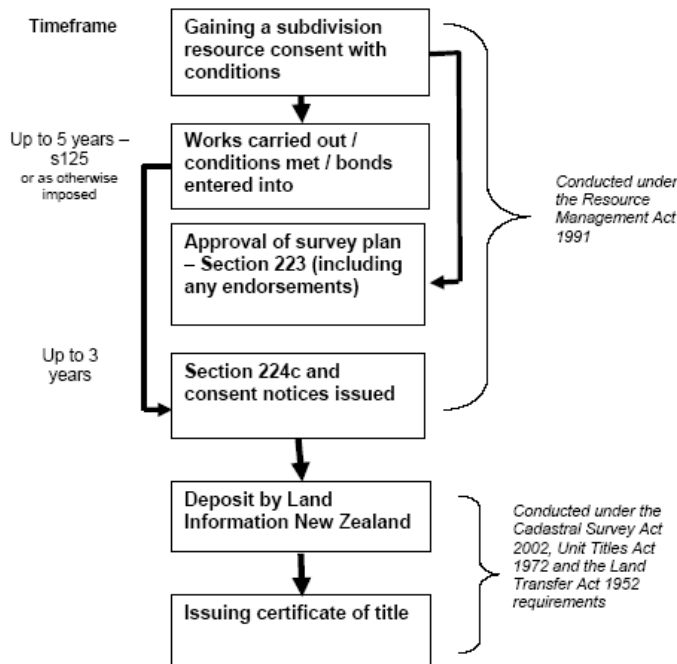
RMA subdivision provisions generally do not apply to the subdivision of Māori land unless land is proposed for sale outside of the hapū. The other exemptions are outlined in s11(1)(b) - (d), and include subdivisions:

- to acquire, take, transfer or dispose of land under the [Public Works Act 1981](#)
- to establish, change, or cancel a reserve under s338 of the [Te Ture Whenua Māori Act 1993](#)
- to transfer or resume land under either s23 or s27D of the [State Owned Enterprises Act 1986](#)
- to vest, transfer or gift land to the Crown or any local authority, New Zealand Historic Places Trust or the Queen Elizabeth II National Trust
- to transfer, exchange, or otherwise dispose of land made by an order under subpart 3 of Part 6 of the [Property Law Act 2007](#), relating to the granting of access to land-locked land.

The subdivision process

The process of subdivision involves several stages as indicated in following Figure 1. The first four stages are primarily under the jurisdiction of the RMA. The process of gaining a subdivision consent is no different to obtaining a land-use consent, requiring both an assessment of the application, determination on notification, and a final decision.

Figure 1: Process of subdivision



Gaining a subdivision resource consent



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Very few district plans provide for subdivision as a permitted activity, and even then s223(1)(b) (Approval of survey plan by territorial authority) requires that a certificate of compliance first be obtained under s139 of the Act. An application for a subdivision consent needs to be accompanied by a subdivision (also called "scheme") plan, together with an explanatory report, which will include any information required by the district plan. As with any resource consent application, an assessment of effects on the environment is also required. In addition, Form 9 of the RMA lists specific information required to be lodged as part of a subdivision consent application.

The subdivision application will be assessed by the territorial authority in accordance with the relevant provisions of the district plan and the RMA. Subdivisions that involve significant earthworks, discharges and/or diversions of watercourses may require consents from the regional council. In these cases, it is common for councils to work together with the applicant, either informally or formally, in the processing of the subdivision consent. In some situations, either the notification or consideration of an application may be deferred under s91 until an application for the regional consents is made. A joint hearing may also be considered necessary (s102).

Conditions of subdivision consent may be imposed under s108 (Conditions of resource consents) and 220 (Conditions of subdivision consents). For most subdivisions, these will be based on matters outlined in the district plan.

Works carried out/conditions of approval met

The second stage of subdivision involves the consent holder complying with the conditions of subdivision consent. This typically includes the payment of any financial or development contributions, design and approval of the engineering details by the council, and completing the physical works such as the provision of roading, water supply, earthworks and drainage.

During this period a licensed cadastral surveyor will define the allotments and prepare the title plan for submission to the council and lodgement with Land Information New Zealand.

Approval of the survey plan (including any endorsements) by the territorial authority

This stage involves approval of the survey plan by the territorial authority prior to approval and deposit by Land Information New Zealand.

The plan is submitted to the council under s223 for checking that it conforms with the subdivision consent. Council has 10 days to either approve or decline the plan under s223(1A). It must ensure that the subdivision layout and provisions are correct and that all conditions of the consent have been (or will be) satisfied. Conditions may include matters such as required construction activities, vesting of lands for roads and reserves, payment of financial or development contributions, amalgamation of allotments,



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protection of land against erosion, granting or reserving of easements, and registration of bonds or consent notices for securing conditions of a continuing nature.

At this stage, the council may approve the plan under s223 notwithstanding that some or all conditions of subdivision consent have not yet been satisfied. The council certificate may be endorsed on either the plan or a copy, or on an accompanying document appropriately linked to the plan. The certificate must be signed by the chief executive or an authorised officer of the council.

To allow the survey plan to be deposited with the Registrar General of Land, the council is further required under s224(c) to provide a certificate (on the plan or a document signed similarly as for the s223 certificate) stating that all or any of the conditions of the subdivision consent have been complied with to its satisfaction. For any condition that has not been complied with, the s223 certificate must note that one or more of the following relevant actions has been taken:

- a completion certificate (s222) has been issued;
- a consent notice (s221) has been issued;
- a bond (s108(2)(b)) has been entered into by the subdividing owner.

The two certificates may also be combined into one statement and duly signed.

The plan and appropriate documentation are then ready for lodgement with Land Information New Zealand for approval, deposit, registration and issue of new titles.

Approval and deposit by Land Information New Zealand

The final stage of subdivision involves survey plan approval and deposit by Land Information New Zealand and cannot be fully executed unless the plan is accompanied by the required s223 and 224(c) certificates and all necessary documents for registration as required by s224.

The plan may be lodged as either a traditional hard copy or as electronic data. It is processed to check the definition of land boundaries and validate that it correctly fits into the national cadastral database (called [Landonline](#)). Once the plan has been assessed as correct, the plan is 'Approved as to Survey' under the Cadastral Survey Act 2002.

It then remains in Landonline while it is examined for title purposes as to all documentation having been lodged (including an application for new titles) and in correct format for registration. Once all matters are in order the plan is deposited by Land Information New Zealand and fully merged into Landonline to become part of the updated cadastre. New titles are finally issued under the Land Transfer Act 1952 (or the Unit Titles Act 2010).

If any of the above matters cannot be properly dealt with the plan cannot deposit. In that case there is a maximum period of three years from the date of the s223 approval for issues to be resolved and the plan to subsequently be deposited (s224(h)).

Differences between subdivision and land use

The fundamental difference is that subdivision cannot be carried out unless it is "expressly allowed by a rule in a plan or a resource consent" (s11 of the RMA), whereas land-use activities are permitted unless otherwise provided for in plans (or resource consents) (s9).

The key differences for councils between managing subdivision and land use include the following:

- Information requirements for subdivision consents in a district plan will usually be more extensive, particularly regarding infrastructure and engineering matters. An application for a subdivision consent will often involve the assessment of technical matters such as services and reserve contributions, and other financial contributions. This usually involves specialist advice from surveyors and engineers (both internal and external to council), recreation / open space planners, etc.
- Section 220 provides a specific list of conditions that can be included on a subdivision consent, in addition to the general conditions on all resource consents under s108.
- An applicant can only apply to change or cancel the conditions of a subdivision consent, with the exception of a condition relating to the duration of the consent, prior to the deposit of the survey plan under s223 (s.127(1) (a)).
- An applicant can apply to change or cancel any condition specified in a consent notice after the deposit of the survey plan (s221(3)). The provisions of ss88 to 121, and 127(4) to 132 apply to any application to vary or cancel a consent notice, or for the consent authority to review a consent notice.
- Esplanade reserves must vest upon subdivision (under specified circumstances described in s230, unless the district plan or a resource consent provides otherwise).
- The conditions associated with subdivision consents are generally staged or have more options for the applicant to bond or secure compliance to allow the subdivision to proceed, such as through completion certificates (s222), consent notices (s221) and bonds (under s108(2)(b)).
- Most subdivisions will involve some form of easements, covenants and rights-of-way
- Conditions must be finite so that they are able to be completed to obtain a s224(c) certificate. However, for a condition to be complied with on a continuing basis by the subdividing owner, a consent notice is required.

Good practice tips

Subdivision and land-use applications for the same development site should normally be treated together, to ensure that all potential effects associated with a proposal are assessed.

Whether dealing with a subdivision consent, a land-use consent or a joint consent, it is important that you read any certificates of title to ensure that you are fully informed about all the particulars relating to the site(s).

A further important difference between subdivision and land uses is that subdivisions will often involve a significant contribution in land and infrastructure that becomes publicly owned after the subdivision has occurred.

The general costs associated with subdivision are also different to those associated with land-use consents. Carrying out a subdivision has a number of costs that are not always readily apparent.

These costs would generally include:

- council fees for the subdivision consent application and ss223 and 224 certificates
- council fees for engineering approval and works supervision
- council fees for any associated land-use consent
- connection to the public infrastructure network (serviced site)
- extending services for upstream catchments (serviced site)
- extensions or improvements of the public infrastructure network necessary to serve the subdivision (serviced site)
- constructing and maintaining on-site disposal systems (un-serviced site)
- obtaining a valuation for assessing the reserve contribution
- financial or development contributions (eg, road and reserve contributions and public services upgrading contributions)
- consultant fees (surveyors, engineers, planning consultants, landscape architects)
- solicitor (council's and applicant's) fees for consent notices, drainage easements, and bond documents
- construction of engineering works, such as driveways, roads, services, etc.
- costs associated with resource consent conditions, such as protecting areas of native vegetation
- fees charged by Land Information New Zealand for plan approval and deposit, and issue of new titles.



Managing subdivision in the district plan

Subdivision is primarily concerned with the changing ownership of land and defining and redefining property rights. Many subdivision activities have only a minor impact on land use. However, the creation of new parcels of land is generally always accompanied by expectations of associated land use (e.g. a dwelling on a new residential or rural lot). For major subdivisions such as greenfield subdivisions, or rural-residential developments, the subdivision process provides a vital framework for managing land development.

Subdivision provisions in plans are one tool that can be used to control the use, development and protection of land and associated natural and physical resources in a district. Subdivision provisions can be implemented through one or combination of the following approaches:

- District plan objectives, policies and rules (provisions are usually generalised and district wide); and
- Structure or concept plans (often area specific and more detailed).

There needs to be clear linkages to related district plan rules dealing with land use to ensure a consistency in approach. Subdivision rules may also be a method (usually in conjunction with land-use controls) to achieve other land use objectives, such as managing growth, through defining minimum site areas required on subdivision.

The first important step in deciding when and how to use subdivision controls in your plan is determining what land use issues need to be managed.

1) Identifying subdivision issues

The first step is to identify what land use issues are relevant to the district, and whether subdivision controls can be used as a method to help address these. This should also form the first part of any s32 analysis.

The issues for the district are identified through research and monitoring, carried out in association with the plan or policy development. When researching land use issues and determining where subdivision controls may be appropriate to manage these, particular consideration should be given to the following:

- growth trends
- opportunities for economic growth and employment
- rural land use patterns and any scope for further development
- urban land use and the potential for expansion by infill and/or greenfields development
- existing subdivision patterns and types (unit titles, cross-leases, etc);
- infrastructural constraints (e.g. roading, sewerage, stormwater, water supply)
- hazards and geotechnical constraints
- the need to protect important natural areas or features



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- problems in the use and implementation of current subdivision provisions (e.g. adverse cumulative effects arising from intensified land use, lack of available infrastructure or an increase in reverse sensitivity effects).

Research may also assist in determining whether a district-wide or an area-specific approach may be most appropriate. In some cases, if the issues are site or area specific, such as infrastructural constraints, a structure plan approach may be more appropriate than generic subdivision provisions. In other cases, such as general urban or rural infill and subdivision, the issues may be generic to the whole district or "zone" related. In these circumstances, it is more appropriate to have relevant objectives and policies contained in the general subdivision provision section(s) of the district plan. It is important to remember that such subdivisions may generate cumulative effects over time which need to be monitored and managed accordingly.

New or amended subdivision provisions may be investigated as a result of operational (existing plan implementation) issues, or in response to a strategic issue. The following are the main strategic planning issues where plan provisions on subdivision are particularly important:

1. Urban growth management;
2. Urban growth and effects on urban form;
3. Managing rural subdivision, particularly rural-residential development; and
4. Subdivision within sensitive landscape areas.

How subdivision can be used as a method for addressing these issues is addressed under [using subdivision provisions to address strategic planning issues](#).

2) Identifying effects associated with managing subdivision

Effects associated with subdivision and the development that may follow it can be both **direct** and **indirect**. The effects will vary depending on the characteristics of the receiving environment and the nature and purpose of the development proposed. As such, it is necessary that the district plan provides clear linkages between those parts of the plan containing the technical subdivision requirements (e.g. provision of services or financial contributions) and the sections of the plan addressing land use activities (e.g. density standards, disturbance of culturally significant sites, location of natural hazards, provision of car parking or road safety).

The planning maps should play an important role in identifying site-specific characteristics that should be considered at the time of subdivision. For example, natural hazards, sites of historic or archaeological significances, amongst others. Set out below is a summary of subdivision effects that a district plan might seek to manage, and the possible linkages to other parts of the plan.

a) Potential direct effects arising from subdivision:

- **Effects on landform and vegetation:** arising from works proposed as part of subdivision consent, such as vegetation clearance; earthworks associated with the



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construction of building platforms; provision of infrastructure, including roads, footpaths, driveways and site works; loss of productive potential from versatile soils and modification of natural landscape character. Given the range of potential effects, linkages are needed to plan provisions on protected landscape areas, ecological areas, protected trees or vegetation, controls over earthworks (generally and adjacent to waterways) and any structure plans.

- **Effects on water quality:** arising from stormwater run-off from land development, loss of vegetation and potential silt and contaminant loadings entering water bodies. On-site effluent treatment and disposal systems may also affect ground water quality. However, subdivision may also provide opportunities to improve or protect water quality through riparian management along waterway margins, public acquisition of land in the coastal marine area, and the provision of esplanade reserves or strips. Linkages are needed to plan provisions on surface water management, dwelling densities, waterway setbacks, and relevant regional planning requirements.
- **Effects on infrastructure:** arising from increased demands on stormwater, sewerage, roading, energy, and water supply depending on the type and intensity of development. In rural areas, developments may rely on on-site septic tanks, wells, rainwater and ground soakage, and there may be cumulative impacts on the provision of reticulated services. Linkages are needed to any structure plans, urban growth policies, rural land use provisions financial contributions in the plan, the Long Term Plan and relevant regional planning requirements.
- **Effects associated with hazards:** arising from the creation of additional allotments within an area that may be susceptible to natural hazards, thereby increasing the risks of falling debris or subsidence (which may be relevant to seismic hazards), flooding, inundation and/or erosion (also note the subsequent liability issues associated with this). Linkages are required to planning maps and provisions identifying natural hazards and relevant regional planning requirements.
- **Effects on public access:** arising from a need to maintain and enhance public access to public reserves, the coast, a river or lake. Linkages are required to plan contents relating to important natural features and identification of waterways subject to esplanade requirements or setbacks. The promotion of walkways and cycleways may also be important considerations, particularly where councils already have such strategies in place.
- **Effects on cultural and heritage sites:** arising from earthworks or development associated with subdivision which has the potential to modify or damage historic, archaeological or cultural sites and landscapes. Linkages are required to plan provisions identifying and protecting heritage or archaeological sites, or sites of cultural significance to Tangata Whenua.
- **Effects associated with the creation and positioning of new boundaries:** arising from provision of private open space, height of buildings in relation to boundaries, vehicular access, parking spaces, and provision of public and private infrastructure; and the physical changes associated with an increased dwelling



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density. Linkages are required to plan provisions dealing with density controls, height bulk and location requirements.

- **Provision of legal access:** arising from effects on future landowners and any changes to the network utilities located in the adjoining roading network, including roading designations or upgrades (e.g. widening, seal extension etc) or meeting the requirements of the New Zealand Transport Agency where access is to be provided off a state highway (e.g. 'Limited Access Roads'). Linkages are required to plan provisions on designations, utilities and roading hierarchies/classifications.

The plan should clearly identify which issues are to be managed through land use controls, which are to be controlled through subdivision controls, or which will be managed through a combination of these (including where issues are intended to be managed in conjunction with regional council controls).

b) Indirect effects arising from subdivision

There is a need to be aware of the indirect effects that can result from the subdivision of land. These may include:

- **Social, economic and land use effects** arising from creation of different parcels of land resulting in land being developed, managed for different purposes, or occupied by additional people. This may result in demand for additional infrastructure, community facilities, public and private transport, and a change in amenity values or social coherence (e.g. if low residential densities are replaced with high residential densities).
- **Restrictions on land use development rights** arising from subdivision, depending on any land use controls in the district plan, or consent notices, covenants and encumbrances on the new allotments that may dictate the type or nature of any future development. Restrictive covenants are becoming common in large residential developments, and act as supplementary land use controls outside the district plan.
- **Land use development expectations** arising from subdivision, due to the strong presumption by purchasers that subsequent occupation and development will be permitted and the market therefore values the new allotments accordingly.
- **Reverse sensitivity effects** arising from subdivision. For example, creation of smaller rural lots leading to closer settlement and lifestyle development sensitive to rural activities, resulting in reverse sensitivity effects on existing rural activities.

Little or no change to the existing environment may arise from certain types of subdivision applications. Examples include where the land has already been developed and the subdivision is merely altering the legal configuration of property boundaries (e.g. transferring from a cross-lease to a freehold title); or where the purpose of the subdivision is for asset management that does not necessarily result in new development (e.g. for family estates); or for creation of minor utility sites or for minor boundary adjustments.



3) Framework for managing subdivision in the district plan

In developing district plan provisions, it is important to keep in mind that subdivision can occur in stages and for different reasons. Therefore the plan needs to anticipate these different circumstances. The majority of subdivision applications can be grouped into the following broad categories:

(a) Major residential and/or business development

This category includes Greenfield subdivisions, peri-urban development, new settlements or resort developments.

Subdivisions of this nature generally have a major impact and raise a range of issues that will need to be addressed through various provisions throughout the plan. A subdivision of this nature generally invokes an assessment of the relevant objectives and policies to ascertain the merits of the type and density of development proposed. The council should ensure that the subdivision layout is in accordance with any structure or concept plan that may have been approved at the time of a zone change. Council should also consider wider strategic issues, such as roading linkages, provision of reserves, protection of natural areas, housing supply, economic growth, and employment. Consideration should also include how the subdivision is to be staged in order to promote the coordinated and efficient provision of infrastructure.

(b) Infill development

This category includes subdividing existing residential sections or the redevelopment of former commercial sites.

A subdivision for this purpose will generally have minor effects in isolation, but may contribute to significant cumulative effects that need to be addressed through plan provisions. The district plan should provide a clear policy framework for addressing the cumulative effects of infill development on the character and amenity of the surrounding area, and subsequent pressure on infrastructure, including roading networks, sewerage and stormwater and the provision of reserves. Design guidance may be a useful supplementary method.

(c) Rural subdivision

This category includes the creation of lifestyle blocks or to provide for higher intensity land use.

Like residential infill development, a subdivision for this purpose will generally have minor effects in isolation, but may contribute significant cumulative effects that need to be addressed through plan provisions. The district plan should provide a clear policy framework for addressing the cumulative effects of rural subdivision on the character and amenity of the surrounding area, and subsequent pressure to upgrade roading and other services (e.g. water supply, effluent disposal, rubbish collection). The creation of lifestyle-type allotments can also create reverse sensitivity effects on existing land use



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activities that are commonly located in the rural environment (e.g. viticulture, dairy farming, intensive pig and poultry farming operations).

(d) Subdivision within sensitive landscapes

This category includes subdivision within an area identified as an outstanding natural landscape or feature, or within coastal/riparian margins.

A subdivision within a sensitive landscape area has the potential to create significant visual and amenity effects due to a change, or establishment of new, boundary plantings, buildings, and accessways or through the associated intensification in land use which follows. Such effects are likely to be greater than for rural subdivisions generally.

The creation of new allotments within sensitive areas may require the consideration of issues associated with the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers. It may also require consideration as to whether 'environmental compensation' (e.g. protection of indigenous vegetation) may offset any adverse effects associated with the development. Particular consideration must be given to the matters in s6 of the Act, preferably supported by specific policies in the plan.

(e) Specialised subdivision activities

This category includes changes in types of tenure, or allotments for utility or reserve purposes.

A subdivision for this purpose will generally (although not in every case) have minor effects and tend to primarily relate to a change in [land tenure](#), such as within an established commercial or industrial development. It may also relate to accommodating specific infrastructural or community based facilities, including utility structures and reserves. In these instances, it may be appropriate for the district plan to provide an exemption to any minimum allotment size or servicing requirements that would otherwise apply to a 'standard' subdivision. Exemptions to promote the protection of historic heritage or natural values may also be appropriate.

(f) Boundary adjustments

This category includes rationalising of property boundaries, and asset management.

A boundary adjustment is a form of subdivision involving the reconfiguration of lot boundaries, rather than the creation of additional allotments. A subdivision for this purpose will generally have minor effects. However, it may facilitate a change in land use (e.g. by realigning the parcel boundaries into a more useable area and shape, or by providing a wider road reserve) or represent the first stage in a larger development proposal. As no additional allotments are being created it is often difficult to assume a change in land use. In order to avoid potential adverse effects associated with a more intensive land use, the district plan may require that no new allotment is smaller than that which existed prior to the boundary adjustment or is not less than the minimum allotment size for that zone.



Subdivision and hazard-prone land

Section 106 provides the ability for councils to refuse subdivision applications and the discretion to grant a subdivision consent, subject to conditions, in certain circumstances. These circumstances are where:

- the land, or any structure on the land, is or is likely to be subject to material damage by hazards
- any subsequent use of the land is likely to accelerate, worsen or result in material damage to the land, other land or structures through hazards
- the subdivision has not been designed to give legal and physical access to each newly created allotment.

Section 106 is an exception to s87A(2), which otherwise requires that consent authorities must grant a resource consent for a controlled activity.

This section recognises that not all hazard-prone land can be easily identified at the time of plan preparation. The council may become aware of potential risks only at the time of detailed site analysis for a subdivision application. This provision provides a council with the discretion to be able to allow the subdivision of hazard-prone land if the applicant can demonstrate that they can adequately address any adverse environmental effects.

There are potential legal liability issues for both the council and an applicant or developer surrounding the subdivision of hazard-prone land that should be addressed both at the time of plan preparation and during resource consent assessment.



Subdivision and esplanade reserves

The RMA contains specific provisions relating to esplanade reserves and esplanade strips. The purpose of esplanade reserves and esplanade strips is to help:

- preserve the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins
- protect against inappropriate subdivision, use and development
- maintain and enhance public access to and along the coastal marine area, lakes and rivers.

They can also have other purposes, such as ecological protection and natural hazard management (s6).

Sections 77, 220, and 229 to 237-237H set up a mandatory prescriptive regime that must be observed in the subdivision process. These require that an esplanade reserve is provided upon subdivision in defined circumstances, unless there is a rule in a plan or a resource consent that allows otherwise. This contrasts with the situation for land uses, where the presumption is permissive and an esplanade reserve is not required unless there is a rule in the plan to that effect.

[Esplanade reserves and strips](#) are the subject of a separate Quality Planning guidance note.



Subdivision and Māori land

[Māori land](#) is defined in s129 of the [Te Ture Whenua Māori Act 1993](#). This section defines Māori customary land as "land that is held by Māori in accordance with tikanga Māori".

The Te Ture Whenua Māori Act made significant changes to the powers of territorial authorities to require esplanade reserves and reserve contributions on the subdivision of Māori Land. Its primary intention was to:

- ease the pressures on Māori land owners to partition or subdivide land
- enable multiple-owned blocks of Māori land to be developed and retained within Māori ownership.

There are two main differences between normal subdivision and subdivision of Māori land:

- section 11(2) exempts Māori land from the subdivision provisions of the RMA
- section 108(9)(b) exempts Māori land for the purposes of requiring land (esplanade reserve, reserve or esplanade strip) as a financial contribution.

Te Ture Whenua Māori Act provides that any applications for subdivision of Māori land that are to remain within the hapū will be dealt with entirely by the Māori Land Court. The Māori Land Court will decide on whether esplanade reserves or reserve contributions will be required. It will also usually impose a restriction that the land may not be alienated other than in accordance with the Te Ture Whenua Māori Act. The council is entitled to make submissions to the Māori Land Court if it feels that reserves should be required and/or a survey plan submitted.

This also means that Māori land subdivision within hapū is not subject to the same assessment as a 'normal' subdivision being assessed by a council, particularly regarding size, shape, area, access and (most importantly) infrastructure and servicing unless the Māori Land Court chooses to address these issues.

Any applications that would involve the transfer of the land outside the hapū are subject to the normal subdivision provisions of the RMA.

Good practice tip

Make sure you are clear when advising customers of the differences between subdividing land that is to stay within hapū ownership and land that is to change ownership outside the hapū.

There are three options for taking esplanade reserves or land as part of the subdivision of Māori land:

- where ownership remains with the hapū, esplanade reserves and reserves can only be imposed by the Māori Land Court
- where ownership will transfer out of the hapū, the council may take esplanade reserves or reserves (subject to confirmation by the Māori Land Court)



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- where the council is satisfied that the land is not going to be sold and that only a present owner will acquire any other interest, it has the discretion to waive reserve and roading requirements.

Most records of Māori land are held at the [Māori Land Court](#), although [Land Information New Zealand](#) also holds some land records. For information about Māori freehold land, see the [Māori Land Online](#). The database contains Māori Land Court information about Māori freehold land and can be used to locate individual Māori land blocks on a computer-generated map.



Using subdivision provisions to address strategic planning issues

a) Urban growth management

Some regional and city/district councils with large urban areas, and/or in areas subject to rapid growth, promote strategies of urban growth management and consolidation. These strategies generally adopt a more restrictive management approach for subdivision outside urban boundaries and a flexible approach allowing for higher densities within urban boundaries, such as around town centres and public transport routes.

Growth strategies are normally based on district wide or region wide issues such as:

- the relationship between land use and (public) transport
- the protection of natural resources and important landscapes
- the efficient utilisation of existing infrastructure
- the reduction of energy use and pollution, and
- the avoidance of encroachment of urban development on productive soils.

The [Housing Accords and Special Housing Areas Act 2013](#) will have significant impacts on growth strategies in some areas.

If the plan review process has identified a need to target growth to a specific area or areas, it is important to consider:

- the costs of developing or not developing in the areas where growth is planned to occur, including any financial contributions
- whether the current engineering standards achieve the form of development planned for these areas
- whether the council is to initiate the rezoning process or whether this is to be left to market-led private plan changes or submissions on reviews of district plans
- any need for structure plans
- how to keep development from encroaching into areas beyond the targeted area.

The management of subdivision in targeted growth areas may be achieved through a simple rezoning of the area to allow standard plan subdivision provisions for higher levels of development to apply, or a more detailed structure plan approach. The structure plan approach is particularly useful when the standard subdivision provisions and associated development controls are not likely to produce the outcome desired for the area. In this context, structure planning may be preferred to the 'traditional' zoning approach especially where land areas are large or land ownership is fragmented. A structure plan and any associated provisions can be inserted into a district plan well in advance of anticipated growth, either at the time a district plan is being prepared or as a plan change when it becomes apparent that there is strong pressure building for development in a given area.

Section 32 duties will require a council to take account of the costs and benefits of particular controls and their effects on the supply and affordability of land, although the primary determinant of this will be at the zoning stage. It is important that:



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- the district plan has clear and understandable links between subdivision rules intended to satisfy urban consolidation objectives and the strategic planning issues on which those provisions are based.
- The district plan has a clear explanation of the linkages between the subdivision rules, issues and objectives, as well as to regional documents and non-statutory documents.

b) Urban growth and effects on urban form

The way subdivision is managed can affect:

- the density of development and the ability to integrate urban design principles into the subdivision design (see the "[People + Places + Spaces](#)" and [Urban Design Protocol](#) for more information)
- roading patterns affecting traffic safety, and subsequent effects on the amenity of the site and surrounding area (e.g. grids or cul-de-sacs)
- road and pedestrian linkages within the subdivision, and also to surrounding land
- how sites relate to the street and each other, and how they are accessed from the road
- the provision of, size and location of reserves
- the provision of core infrastructure, and whether the subdivision is to be developed in stages or not
- public access and riparian management where subdivision is adjacent to the coast, rivers or lakes and public reserves
- the extent to which land stability factors, landscape values, existing or proposed vegetation, earthworks, or cultural or heritage sites can be accommodated within the subdivision layout
- accessibility to public transport, commercial centres, and community, recreational and health facilities
- solar energy and efficiency
- the protection of the productive capacity of soils
- site layout and building design (particularly in areas with significant visual values)
- the likelihood of reverse sensitivity issues occurring particularly at the urban/rural interface
- future growth patterns and forms.

In addition to any specific requirements of a structure plan, a council may choose to apply a standard approach to all subdivision design, such as:

- requiring minimum, maximum or average lot sizes according to the environmental results anticipated within each area/zone
- requiring a minimum coverage area within each lot to ensure reasonable use of the site for a permitted activity
- requiring larger section sizes adjacent to roads, or to provide a buffer to industrial or rural areas
- requiring frontages to reserves and reserves of a minimum dimension in accessible locations



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- providing for privacy and safety and lot layout (for instance the number of front sites versus rear sites)
- limiting the number of accessways that front directly onto arterial roads or state highways;
- ensuring adequate pedestrian and cycle linkages and
- establishing contiguous reserve networks to form green corridors or buffer areas.

If councils are to require particular forms of subdivision design, they need to:

- Explain clearly the forms being sought with linkages back from rules to policies, objectives and issues; and/or
- Provide design guidelines to address urban design principles, to promote the efficient use of existing physical resources, or to achieve a specific amenity characteristic for a particular area.

The formulation and administration of design guidelines is a more technically demanding approach but can also provide a high level of guidance and certainty about the type of subdivision sought. When developing design guidelines, care must be taken to achieve the right balance between achieving reasonable certainty for developers, while also allowing a reasonable degree of flexibility.

c) Managing rural subdivision

Many councils experience pressure to allow for subdivision in rural areas, particularly in locations close to existing urban areas or in coastal areas. The importance of protecting and managing development in coastal areas is articulated in the New Zealand Coastal Policy Statement 2010 (NZCPS). As with any national policy statement, the objectives and policies in the NZCPS need to be given effect to in any regional policy statement, or regional or district plan.

In areas where the density of dwellings is an issue, then the district plan will need to state why dwelling density needs to be controlled through subdivision. This can be important in determining the nature of the urban/rural interface (e.g. a "hard" urban edge) or where special factors apply, such as airport noise. Issues that will often need to be addressed when considering rural subdivision include:

- the availability of reticulated water and sewerage systems
- the effects of on-site servicing on water quality and quantity
- the necessity for roading upgrades
- the possibility of adverse effects, including cumulative effects, on natural resources, rural character and amenity values, and heritage or cultural resources.

Consideration should also be given to wider regional or district planning concerns such as urban consolidation strategies that seek to limit development in rural areas or areas with special rural characteristics.

An indirect effect of an increasing residential density in the rural area is that of 'reverse sensitivity'. Reverse sensitivity occurs when a new land use creates pressure for a



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lawfully established and pre-existing land use to change, avoid or minimise adverse effects on the new land use. The issues arise from the incompatibility of uses, although both may be legally established. The Environment Court has described reverse sensitivity as "the effects of the existence of sensitive activities on other activities in their vicinity, particularly by leading to restraints in the carrying on of those activities".

While there are many examples of reverse sensitivity effects, the risk of conflict between activities in the rural environment is significantly increased where subdivision results in an increase in the number of small blocks and where subsequent intensification of rural dwellings occurs as a result. While it is unlikely that the management of subdivision alone will avoid the potential for land use incompatibilities, it is a relevant factor to consider in determining the way in which subdivision is managed in the rural area. In particular, regard should be given as to whether, or where, the creation of lifestyle blocks is appropriate in order to minimise the risk of reverse sensitivity effects occurring (see ["Managing Rural Amenity Conflicts"](#) for more information).

- It is important to provide a clear and consistent framework for managing rural dwelling and subdivision densities, particularly with regard to reverse sensitivity issues.
- Consideration should be given to aligning subdivision with land management and catchment management issues, such as providing for ecological corridors and managing surface and ground water.
- Subdivision and the resulting potential development rights that may be provided should be used to promote outcomes such as environmental enhancement, natural and cultural heritage protection, catchment management and public access.

d) Subdivision within sensitive landscape areas

These subdivisions primarily occur in rural locations and are strongly sought after because of the quality of the residential environment that can be obtained. Such areas include coastal, alpine, lakeside or river margin environments. They can be differentiated from 'ordinary' rural subdivisions by the sensitivity of the receiving environment, particularly in terms of visual impacts. Other effects which are particularly significant to subdivision in sensitive landscapes are public access, cumulative effects, possible erosion/flooding issues and ecological issues, because the physical character of such environments makes the presence of these constraints more likely.

In the context of sensitive landscape areas, the application of ss6(a) and 6(b) of the Act are important.

- Land use controls in the plan should be based on a landscape assessment to identify those areas within which any restrictions or conditions on development are justified.
- Environmental compensation and promotion of public access may be important factors where subdivision is considered appropriate in some form.



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- Attention needs to be given to any ecological, cultural or heritage values present, and any potential for natural hazards.

See the guidance note on [Landscapes](#) for more information on landscape protection.



Integration with other plans

Sections 74(2)(c) and 75(2)(f) of the Act require that a territorial authority shall have regard to the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities, and address cross-boundary issues.

a) Other district plans

Different district plans can have varying subdivision provisions, even in one region where land having similar characteristics crosses territorial boundaries. Wide differences can occur in the area of minimum site sizes, subdivision consent categories and provisions relating to detailed matters such as permitted earthworks and infrastructure standards. These differences can distort the supply of land, and result in uncoordinated development patterns (including the "leap-frogging" of development over the boundary of a local authority into that of a neighbour with more permissive controls).

To help manage these issues, adjoining territorial authorities should work together on preparing district plan provisions in adjoining areas with the same or similar characteristics adjacent to common boundaries, particularly when considering the provision of infrastructure or urban growth management.

b) Regional Plans

Section 75(4) of the Act requires that the district plan must not be inconsistent with any regional plan. A regional plan or plans do not directly control subdivision, but will impact on related issues of urban growth, soil conservation (particularly earthworks controls), water quantity and quality, and natural hazards.

However, district plans may also manage effects in the same areas, so there is potential for overlap between regional and district plans. District and regional councils need to work together to carefully assess if they need to control what the other council may be able to manage more effectively. However, in some cases overlap is unavoidable because of the complementary nature of district and regional functions. For example, earthworks may have both visual effects (district council) and land stability and discharge effects (regional council).

It is good practice to ensure that overlapping controls between regional and district plans are avoided, or if necessary, then provisions should be integrated as far as possible to ensure that they are consistent and complementary.



Developing subdivision objectives and policies

Section 75(1) of the Act requires that the district plan contain objectives and policies to manage the identified issues. The objectives and policies relating to subdivision should not be too generalised such as to be open to wide interpretation. They should be sufficiently detailed so as to give a clear indication of the district plan's expectations for each given part of the district, including the management of cumulative effects.

The objective and policy framework is particularly important for rural and peri-urban areas, which can contain a diverse mix of landscapes, natural resources, natural hazards, servicing constraints, existing patterns of subdivision and land use activities. If rural areas with quite different characteristics are managed through the same or similar subdivision provisions, such as minimum site sizes, then the district plan should clearly explain why those same provisions apply. Explanations as to why areas are differentiated or managed as a whole should be incorporated into issues or objectives, policies, or explanation of policies or a combination of these. Care is needed to ensure that explanations and reasons do not qualify the actual policy wording, but rather expand on it, to the extent that the intent behind the provisions is clear.

Structure plans will also help in providing for integrated development, clarity of intent and certainty of outcome.

Where subdivision is referred to in a policy and the explanation and reasons for that policy, it should be made clear whether the effects to be managed are envisaged through the zoning of land use (for instance, expected land use densities), or anticipated land use effects which it is considered are best managed through controls on subdivision. Objectives, policies and rules relating to subdivision should preferably be in one place and enable the reader to identify all the issues requiring consideration, or, alternatively, clearly be cross referenced to other relevant plan provisions.

Some plans contain issues, objectives, policies and rules together; others have separate issues, objective/policy and rules chapters. Either approach has its advantages, but in all cases careful consideration is needed to cross-referencing, as subdivision "links" to numerous categories of land use matters in plans.

If you intend to have a separate subdivision section in the plan, and the subdivision objectives and policies relate to process issues only, then there will need to be clear linkages to those other sections of the plan that address the relevant land use considerations, such as residential densities, heritage protection, transportation, natural hazards or infrastructure. Care is required to ensure that where land use issues are covered within the subdivision objectives and policies, the potential for conflicting provisions is avoided, or that critical objectives and policies contained in other parts of the plan are not overlooked when a subdivision application is being assessed.

The district plan should encourage joint subdivision and land use applications, where a land use consent is required for existing or subsequent developments. This means that all the effects associated with the act of subdivision and any land use effects can be



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assessed at the same time, and there can be certainty about the ability of subsequent purchasers to use the sites created. Subdivisions should be designed having regard to subsequent land use, rather than land use having to fit within an already-established subdivision patterns. In large-scale greenfields subdivisions, zoning and structure plan provisions should already be place.

One approach that could be encouraged through district plan provisions is to require a lower category of consent for subdivision where the land use has already been established (such as for boundary adjustments or similar), the subdivision is to divide only those existing land uses, and there are no significant identified effects arising as a result.



Developing subdivision rules

The category of activity - permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited - should closely follow the requirements of the rule making power for District Plans in s76. Refer to the guidance note [Writing provisions for regional and district plans](#) for detailed information on writing rules. Careful consideration should be given to the definition of "site" and how this relates to the implementation of subdivision provisions and to land use controls.

a) Permitted activity subdivision

A major difficulty with the permitted activity category is that permitted activity standards and conditions need to be certain without any element of discretion. Setting subdivision conditions can often involve the exercise of value judgements and it can be difficult to state all the standards that might need to be covered as a permitted activity given the great variations in circumstances between different subdivisions. There can also be difficulties in monitoring and enforcing permitted activity subdivisions. Consequently, there is only very limited scope for this consent category for subdivision activity.

The **permitted activity** category may be appropriate for:

- Subdivisions with simple standards and conditions that are prescribed in the district plan, such as minor boundary adjustments and the subdivision of existing buildings where subdivision was envisaged and provided for at the land use consent stage.
- The conversion of tenure from cross-lease to unit title or fee-simple subdivision.
- A second stage cross-lease where all of the services and financial contributions were paid upon the first stage.

Even in these circumstances, great care would be required to anticipate likely standards applicable for such subdivisions, such as protection of easements.

b) Controlled activity subdivision

The controlled activity category gives certainty of an approval but allows control to be exercised in respect of matters nominated in the district plan. Any assessment of effects on the environment is confined to nominated matters only and conditions may be imposed on a range of specified matters. Unlike controlled activity land use applications, a controlled activity subdivision application can be declined in certain circumstances set out in s106. The district plan may also allow for non-notification of controlled subdivision applications.

For most subdivisions, a robust district plan will make it clear that the type of development which will follow subdivision is anticipated by the plan. If the district plan has clearly indicated standards such as minimum site size and shape, access and suitability of building platforms, then the controlled activity category may well be the most appropriate category within which subdivisions should be placed. This would avoid



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administration and compliance costs such as lot size or density concerns being the subject of a separate assessment on each and every subdivision.

The district plan can reserve control over the ability to impose conditions on such matters as future building location (and even building design, but only in certain sensitive environments), earthworks, landscape treatment, provision of access and utility services, and any financial contributions payable. A controlled activity status would not, however, allow a council to reduce or enlarge the scale of a proposed subdivision or the number of lots therein. For all controlled activities, the council will need to be certain of the infrastructure capacity for that area, and have a well-developed zoning and rules framework.

The **controlled activity** category may be appropriate for:

- Land uses which are already established, or will be established (for instance through a condition of land use consent), and the subdivision will not create any further development possibilities which will result in more than minor adverse effects. Minimum site size and shape controls may not be necessary if there is legal access and all necessary infrastructure is provided for.
- Subdivision that allows for an appropriate pattern and density of development that maintains the character and environmental quality of an area and where environmental standards can be readily set and met.
- Subdivision within commercial and industrial zones where there are no infrastructure capacity issues.
- Residential infill sites where the district plan zoning clearly envisages such development and the subdivision is in accordance with the density provisions of the zone. In such cases, minimum site size, shape and access width controls may in some cases not be considered necessary.
- Subdivisions in accordance with an established structure plan.
- Creation of lots for minor utilities, roading or reserve purposes.
- Boundary adjustments.

c) **Restricted discretionary activity subdivision**

The restricted discretionary activity allows discretion to be exercised over the matters specified in the District Plan. The restricted discretionary category gives applicants less certainty because consents can be refused. However, from a council's perspective it provides the option of refusal if an important standard is not met, and the imposition of conditions is not enough to mitigate any adverse effects. The district plan may also allow for non-notification of restricted discretionary subdivision applications.

The **restricted discretionary** category may be appropriate for:

- Instances where the performance standards in the plan allow some flexibility beyond the controlled activity standards over such matters as site size or shape.



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- Developments within moderately sensitive landscape areas where the plan specifies discretionary criteria as to location of allotment boundaries in relation to existing features or topography, building platforms, access roads, etc.
- Developments which do not comply with detailed provisions of structure plans, and where public input has already been provided through plan reviews or plan changes establishing the zoning applicable.
- Subdivision of sites affecting places or objects of cultural significance or containing heritage buildings or protected trees.
- Subdivisions within areas prone to a moderate natural hazard risk.
- Rural subdivisions within close proximity to established intensive production activities.

d) Discretionary activity subdivision

The discretionary activity category enables wider discretion in considering the effects of subdivision. An application may be notified and consent may be refused. If the district plan has been prepared in a thorough manner, and clearly envisages subdivision subject to justified standards, then it should not be necessary to make wide use of the discretionary activity category.

However, the discretionary activity category may be appropriate for:

- Subdivisions creating sites of less than the normally-prescribed size and where the plan very clearly sets out the objectives, policies and criteria under which applications could be favourably considered.
- Subdivisions achieving heritage protection, providing 'environmental compensation' (e.g. protection of indigenous vegetation), and other potential trading or transferable right concessions.
- Developments within highly sensitive landscape areas, areas subject to a high natural hazard risk, or areas of high cultural or heritage value.

e) Non-complying activity subdivision

The non-complying activity category means that either the district plan will state the activity is non-complying, or the application does not meet the district plan's performance standards. Many district plans will impose a threshold, often in terms of site size, below which subdivision becomes a non-complying activity. In such cases it is very important for district plan policies in particular to clearly articulate how those thresholds have been arrived at, why it is important that they not be threatened; and why those thresholds apply in the relevant zone or area.

Non-complying subdivisions will be subject to the s104D test of either not being inconsistent with the plans objectives and policies, or having effects which are no more than minor. Such applications will not normally derive support from objectives and policies. Non-complying activity applications are often notified and consent may be refused.



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The **non-complying** activity category should be used judiciously, but may be appropriate for:

- Subdivisions creating sites of less than the normally-prescribed size which are not anticipated within the policy framework of the plan.
- Development within areas subject to significant development constraints (e.g. absence of core infrastructural services, within air-noise contours of an airport, under high voltage transmission lines).
- Development which is contrary to wider strategies for urban consolidation.
- Subdivisions which propose significant variations to any pre-approved structure or concept plan.

f) Prohibited activity subdivision

The prohibited activity category means that there is no ability to apply for the particular type of subdivision once the rule is beyond challenge. The Environment Court has stated that the total prohibition of subdivision as a method of control should be used extremely sparingly in sustainable management terms.

The prohibited activity subdivision could be used in areas subject to serious risk of natural hazards and in relation to historic places to avoid cutting off the curtilage from a building.



Supporting components for subdivision rules

Design guides and engineering codes of practice are often used as a method of providing additional guidance and certainty for assessing subdivision applications.

1) Engineering requirements

Most councils have a set or code of engineering standards covering such matters as servicing and infrastructure standards, road widths, earthworks, New Zealand Standards, etc. Some district plans will include engineering standards as part of the plan, and others will have a code of practice that stands outside the district plan. (See [reference to external documents](#) for more information).

While having engineering standards as part of a district plan provides certainty this approach does have some disadvantages. These include:

- Engineering standards can increase the size and complexity of the plan.
- The prescribed standards can often address health and safety issues which do not achieve the purpose of the RMA in managing environmental effects.
- Engineering codes are not always the best way for providing for innovative planning approaches.
- Time delays associated with updating the engineering standards in the plan to reflect changes in practice.
- Engineering standards once in the plan can only be changed by variation or plan change. It is doubtful whether technical standards of this nature should be set through a public process.

Issues of asset transfer from a developer to a council may be best managed outside of the plan. This is to be contrasted to the fundamental health and safety requirements being met in subdivision design and the role of the district plan in setting out these expectations. The approach taken to engineering design can be influential in the design outcome of a subdivision.

It is important that careful consideration is given to how engineering standards will impact on the outcome, and it may be possible for effects to be managed in a way different to prescribed standards. To help manage this issue:

- A district plan should outline what the effect is that needs to be managed, leaving open some discretion in the way that effect can be addressed (this should be as part of a resource consent) - engineering codes could be used simply as a guide to "acceptable solutions".
- Permitted or controlled activity status could apply where provisions in a code of standards are met.

This will leave it open for the developer and the council to agree on an alternative standard, perhaps through a controlled or restricted discretionary activity process, which may better manage effects than the prescribed standards.

Changing technologies, for instance in the area of stormwater management are able to be more easily considered when the engineering code is not part of the plan. It is helpful for the district plan to contain criteria against which alternative standards can be

assessed. It is also important to ensure that the engineering standards are appropriate and do not create outcomes that conflict with the land use objectives and policies. For example, there may be situations where it is appropriate to provide for a lesser width of road to achieve better urban design.

2) Codes and standards

Published New Zealand Standards that can be referred to within the district plan are:

- [The New Zealand Handbook - Subdivision for People and the Environment](#) (SNZ HB 44:2201) published by Standards New Zealand provides alternative environmental approaches and encourages creativity in the design process.
- [New Zealand Standard NZS 4404:2010](#) land development and subdivision infrastructure encourages sustainable development and design that emphasises liveability and environmental quality. It incorporates up to date design principles such as low impact design solutions to stormwater management and urban design principles as well as covering requirements for earthworks, geotechnical needs, roads, and other infrastructure needs.

3) Design guides

Subdivision design guides provide assistance to applicants in interpreting assessment criteria. They are non-prescriptive and may form part of, or sit alongside, the district plan.

A design guide could include:

- Illustrations and guidance of recommended site and road layout and ways in which effects, for instance on landscape or character, can be avoided or mitigated.
- Illustrations and guidance of recommended planting, earthworks, infrastructure and maintaining ecological values.
- References to provisions in the district plan such as objectives, policies or rules relevant to a particular area.

4) Information requirements

In accordance with s75(2)(g), the district plan may state the information to be submitted with an application for a resource consent. Further information may be required under s92.

The district plan should clearly outline the extent to which engineering detail will be required at subdivision consent application stage. It may be appropriate for a district plan to require only that level of detail at consent application stage that is required to give confidence that the effects of subdivision can be adequately avoided, mitigated or remedied. This could be in the form of concept drawings that enable an assessment of effects to obtain the resource consent.



Using structure plans

A structure plan is a plan that guides the development or redevelopment of a particular area of land by defining the basic geographical and management frameworks around which future land uses, provision of infrastructure, open space networks, transportation linkages, and other features for managing the effects of development or redevelopment will be based. Structure plans are particularly useful for managing the development of large areas of land and areas of land in multiple ownership, so as to avoid uncoordinated patterns of development and provision of services.

Structure plans comprise one or more maps, plans or diagrammatic representations of the proposed layout, features and linkages for areas being developed or redeveloped. The maps, plans or representations are usually supported by text explaining the background to the issues which gave rise to the structure plan and the proposed management approach to deal with those issues. The management approach may be implemented through any combination of subdivision controls, land use controls, or agreements.

Structure plans, if sufficiently detailed and incorporated into the district plan, may allow for a lower category of consent for subdivision, for instance restricted discretionary rather than discretionary, than otherwise may have been the case. This is because they logically accompany rezoning proposals where major issues of concern can be addressed through public submissions and hearings on plan reviews, variations or changes.

Structure plans may also provide for different densities and subdivision standards to be adopted, as structure planning provides the council with the ability to develop an area in a comprehensive and integrated manner. This is particularly relevant in the case of greenfield sites and planning for mixed use developments (commercial, industrial, residential, open space) and the provision of services.

Structure plans can ensure that areas with a highly fragmented title structure are developed in a coordinated manner over a short time-span, such as the full urbanisation of areas that were once lifestyle blocks. However, structure plans may be less appropriate when contemplating larger areas over a longer term as the structure plan may become superseded by changing circumstances requiring ongoing resource consent procedures. Similarly caution needs to be exercised where future development is speculative and may or may not happen. A more appropriate technique may be deferred or staged zoning for such areas, with intentions broadly expressed.

- Where a structure plan has been developed, the district plan should include or at least refer to a structure plan as a method of controlling subdivision. This is particularly important in the case of greenfields development, but may also be appropriate in brownfields areas, and redevelopment areas;
- A structure plan should be developed in close consultation with affected parties, including land owners and local communities, iwi, interest groups, infrastructure providers, other councils and relevant government departments;
- The structure plan needs to refer to other council plans such as the Long Term Plan, Annual Plan, asset management plans, regional policy statements and plans, as well as linkages with iwi etc.



Esplanade provisions and subdivision policy

Where a council chooses to develop policies and provisions relating to esplanade reserves and esplanade strips beyond the provisions contained in ss229 to 237, these need to be carefully drafted in the district plan.

- A strategically planned approach to reserves acquisition can assist in ensuring esplanade reserves and strips are provided for in a coordinated manner able to fulfil multiple objectives (e.g. coastal management, water quality protection, recreation and habitat enhancement). Coordination may be facilitated through showing on district plan maps those water bodies where esplanade provisions are to be applied. These can then be viewed by those applying for, and processing, subdivision consents.
- The esplanade provisions should be based on the particular circumstances of the district, taking into account the public access and/or ecological benefits associated with the creation of new esplanade reserves/strips. Consideration should also be given to the circumstances in which the council may wish to purchase land for esplanade purposes beyond the statutory requirements of the Act (e.g. for subdivisions in excess of 4ha or for esplanades wider than 20m);
- The esplanade provisions need to have clear and measurable criteria for waivers and reductions. These criteria need to be linked to community and reserves planning at a strategic level.
- The Plan should provide clear direction through its policies, rules and assessment criteria as to where an access strip or esplanade strip may be a more suitable option than an esplanade reserve.

[Esplanade reserves](#) are the subject of a separate guidance note.



Subdivision and financial/development contributions

The RMA allows for councils to require the payment of financial contributions to achieve the environmental outcomes expressed through its objectives and policies. The use of subdivision provisions in plans has been one of the key ways that councils have been able to assess the need for a contribution to be paid, and for collection to occur. Generally, the need for a financial contribution would be identified through a subdivision consent application, and collection would occur prior to the release of any s224C from the council.

The introduction of the Local Government Act 2002 has provided a new avenue for councils to require development contributions. Under a council's development contributions policy, subdivision may trigger the need for a payment to council. For instance, the trigger could be when the subdivision developer seeks a service connection, which may be a necessary pre-condition for obtaining certification under s224.

The Council cannot elect to have overlapping contribution requirements under both the LGA 2002 and the RMA.

For more information on development contributions, refer to the review of Development Contributions publication on the [DIA Better Local Government webpage](#) and the [Relationship between the RMA and LGA guidance note](#).



Subdivision-related definitions

Land tenure in New Zealand, or the means by which land is held, is derived from English law, and is limited to freehold and leasehold. Under the English feudal system all land was owned by the Crown and the Crown granted land to its tenants for feudal services. In New Zealand, the Crown has an underlying ownership of all land, which legally enables it to restrict uses of private land, or to redefine the rights granted to private owners, through legislation (such as the Resource Management Act 1991).

Along with tenure is the concept of **estates** in land. This was developed to deal with the fact that because land was owned by the Crown, the tenant's rights to that land need to be defined. The most common forms of estate are fee simple and leasehold. Fee-simple estates last until the owner of the estate dies intestate without successors, at which time the land ownership would rest fully with the Crown. A leasehold estate is less than a fee-simple one, and is the estate for a fixed term of years (quite often 999 years). The modern concept of land ownership is that the interest in the land is "a bundle of rights" which may be exercised in respect of a particular piece of land.

An allotment is defined in s218 of the Act as meaning:

- a) Any parcel of land under the Land Transfer Act 1952 that is a continuous area and whose boundaries are shown separately on a survey plan, whether or not -
 - i) The subdivision shown on the survey plan has been allowed, or subdivision approval has been granted, under another Act; or
 - ii) A subdivision consent for the subdivision shown on the survey plan has been granted under this Act; or
- b) Any parcel of land or building or part of a building that is shown or identified separately -
 - i) On a survey plan; or
 - ii) On a licence within the meaning of [Part 7A of the Land Transfer Act 1952]; or
- c) Any unit on a unit plan; or
- d) Any parcel of land not subject to the Land Transfer Act 1952.

Freehold subdivisions occur where new allotments (usually referred to as lots) are created under the Land Transfer Act and ownership is held in an estate in fee simple. Fee simple means that the ownership of the land and the buildings on it is held solely by those persons listed on the certificate of title. Freehold is the most common form of subdivision. The boundaries are pegged by registered surveyors and a 'guaranteed' title is issued (see Reading and Interpreting Certificates of Title for situations when titles are not guaranteed).



Leasehold subdivisions: land or buildings or both that are leased for a period exceeding 35 years is defined in the RMA as a subdivision. A leasehold estate is most commonly defined as an estate or interest in land held for a fixed term of years. Ownership is through a lease from the owner of the freehold title. Leaseholds usually operate under continually renewable terms, with a 'ground rent' payable to the freehold title owner. The leaseholder effectively buys the right to own the dwelling or building and lease the land for a certain time. The leaseholder can sell the lease, but there are often restrictions on the use of the property.

Unit title subdivisions (or strata titles) generally occur where more than one dwelling or building is built on a single title and separate ownership is required. This includes multi-storey developments and the unit title allows for ownership to be defined in three dimensions. A unit title provides single ownership of a 'principal unit' (the dwelling) and one or more 'accessory units' (e.g. garages or outdoor spaces). Each principal and each accessory unit will usually be defined spatially, so that the dwelling and any other buildings or outdoor spaces are contained in compartments of space, which are owned rather than leased. There are usually common areas that provide access for all unit title owners (e.g. driveways, lifts and stairwells).

A unit title is made up of two components:

- ownership in the particular unit
- an undivided share in the ownership of the common property.

In the event that a unit title is cancelled, each owner will be provided with an undivided share in the ownership of the units.

The [Unit Titles Act 2010](#) controls such developments, and a body corporate administers the day-to-day running of the complex. Unit titles involve owners in financial and administrative activity, such as attendance at yearly body corporate meetings, decision-making with regard to changes to units, paying body corporate administration fees, and maintenance of common areas. Voting rights for a body corporate are usually equal to 1/10 of the value of the unit.

Company lease or company titles occur where the owners of the units are shareholders in a private company with occupation rights only to an individual unit. This form of lease is now rarely used. The main disadvantage of the system is the difficulty shareholders face in raising a mortgage, because there is no satisfactory security. A company lease is more restrictive than a unit title because approval of the majority of shareholders is necessary for either leasing or selling a company lease property. 'Company lease' is defined in s2.

Cross-lease subdivisions (occasionally called composite leasehold and share titles) occur where buildings or dwellings are leased. The cross-lease plan shows the dwellings as 'flats' and is often called a 'flats-plan'. A cross-lease title is a legal device for registering an interest in land. It emerged about 25 to 30 years ago as a means of obtaining mortgage security for the purchase of ownership flats. The term 'cross-lease' is



used to describe the method whereby the purchaser of a dwelling/flat obtains a lease of that dwelling, generally for a term of 999 years, together with an undivided share in the underlying fee-simple estate. Although cross-leases originally involved two titles, the method has now evolved to a single-title system. This 'composite' title is a single title document recording the proprietor's proportional undivided share in the fee-simple title and an estate in leasehold of the particular flat.

Cross-lease titles usually involve common-use areas (e.g. shared driveways) and exclusive or restrictive covenant areas (e.g. backyards). The owners agree to use certain areas for their own use without infringing on the areas of the other owners. Because the owners are tenants in common of all the land, they do not trespass if they encroach on or use another person's exclusive area. They are, however, in breach of their lease, and the offended party could seek a civil remedy. It is important to note that it is the building that is being leased, not the entire land.

Any changes to be made to a cross-lease site or building require the consent of all other cross-leasing owners (e.g. to erect a garage or add a new room).

The subdivision of land (where land is defined as including the airspace above land) is defined in s218 as being:

a) The division of an allotment -

I. By an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of the allotment; or

II. By the disposition by way of sale or offer for sale of the fee simple to part of the allotment; or

III. By a lease of part of the allotment which, including renewals, is or could be for a term of more than 35 years; or

IV. By the grant of a company lease or cross lease in respect of any part of the allotment; or

V. By the deposit of a unit plan, or an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of a unit on a unit plan; or

b) An application to the Registrar-General of Land for the issue of a separate certificate of title in circumstances where the issue of that certificate of title is prohibited by section 226.

Survey plan has the meaning set out in the following paragraphs, in which cadastral survey dataset has the same meaning as in s4 of the Cadastral Survey Act 2002:

(a) survey plan means -

(i) a cadastral survey dataset of subdivision of land, or a building or part of a building, prepared in a form suitable for deposit under the Land Transfer Act 1952; and



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(ii) a cadastral survey dataset of a subdivision by or on behalf of a Minister of the Crown of land not subject to the Land Transfer Act 1952:

(b) Survey plan includes:

(i) A unit plan; and

(ii) A cadastral survey dataset to give effect to the grant of a cross lease or company lease.

Exemptions under the Public Works Act 1981: the Public Works Act 1981 provides the Crown and local government with the power to acquire land, either by agreement or by compulsory acquisition. Where land has been taken, transferred or acquired, the Crown or local authority can direct the District Land Registrar to issue a certificate of title (for the estate on the land or part of the land) without requiring any subdivision consent under the RMA. A similar provision applies when land is being disposed of.

Exemptions for reserves under Te Ture Whenua Māori Act 1993: this exemption applies when either Māori freehold land or any general land is set apart as a Māori reservation for specifically defined purposes. The only requirement is that the Chief Executive (of Te Puni Kōkiri) declare the land to be included in Māori reservation by notice in the Gazette, after which time the land legally forms part of that reservation.

Exemptions under the State Owned Enterprises Act: these exemptions address situations where:

- the Crown is transferring land to a state enterprise and when land that has previously been in state enterprise ownership is found to be wahi tapu and subsequently resumed by the Crown,
- land is being resumed on the recommendation of the Waitangi Tribunal
- land is being resumed under the provisions of the Public Works Act 1981.

Exemptions for orders under the Property Law Act 2007: this section of the Property Law Act 1952 allows the owner of a piece of land-locked land to apply to the Court for an order to have reasonable access to the land, granted by vesting any other piece of land, or creating an easement over any other piece of land, or both (in both cases whether or not that piece of land adjoins the landlocked land).

Māori freehold land came into being in two ways. Firstly, the Crown set aside land for Māori from the Māori customary land that it purchased for the settlement of New Zealand. Specific Māori individuals were granted Crown grants for joint ownership of such land. Secondly, the Māori Land Court researched ownership of Māori customary land that had not been alienated, and appointed (up to) 10 Māori individuals into joint ownership. Ownership of the land was confirmed by the Māori Land Court and title granted by the Crown.



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The purpose of the **Te Ture Whenua Maori Act** is to facilitate and promote "the retention, use, development and control of Maori land as taonga tuku iho by Maori owners, their whanau, their hapu and their descendants".

Reference to external documents

If a plan incorporates standards contained in an external document, it should refer to a particular version of that document. If the standard is revised, the council should notify a change to its plan, replacing the old standard with the new one. This will allow public submissions on inclusion of the new standard in the plan.

However, take care with a plan which incorporates standards from an external document. These may change, and amending a plan is not a simple process. If the plan lags behind amendments to the standard in an external document, it could cause confusion.

Codes of practice or New Zealand Standards may give unreasonable discretion to the council. A discretion contained in an external standard could make a rule ultra vires if that standard is used to form a condition on a permitted activity.

