



This information sheet has been made available to assist those who are either interested in or considering purchasing a section in a subdivision. This information sheet is by necessity general in nature and not intended to be a substitute for specific legal advice. If you have any queries or concerns relating to the purchase of your particular section, please do not hesitate to contact us.

Subdivision Process

The subdivision process can be long and sometimes complicated. You may have been provided with time frames by either the real estate agent or the developer. If we are acting for you on the purchase, we will write to the Vendor's solicitor to request estimated dates for the various milestones which will be required to be achieved before settlement.

We set out below a brief summary of the subdivision process for your information:

- **Application for Resource Consent:** While most sale and purchase agreements will be entered into after an application for resource consent has been made this is not always the case. Applying for consent is the first step a developer must make in order to carry out a subdivision.
- **Issue of Resource Consent:** Once resource consent for the subdivision issues we can review the same for you and advise if there is any matter prejudicial to your interests contained in the conditions.
- **Completion of Consent Conditions:** The developer will need to complete certain conditions of the resource consent prior to the issue of title. While some of these conditions will pertain to legal matters, many will require the undertaking of physical works on the property and the extent of conditions provided for in the resource consent will affect the amount of time prior to title issuing.
- **Issue of a Section 223 Certificate:** A survey plan is required for new titles to issue, and this plan must be approved by Council. Once the plan has been approved by Council under Section 223C we will review the same and ensure that the areas and boundaries shown on the plan for your section match those under your sale and purchase agreement.
- **Issue of 224C:** A Section 224 Certificate is confirmation from Council that all the conditions of the resource consent have been satisfied. Typically the Section 224 Certificate is the last milestone required prior to a developer's solicitor lodging orders for new Certificate of Title with Land Information New Zealand. Once we are advised that a Section 224 Certificate has issued we will be in contact with you as settlement of the transaction will likely be three to four weeks away at this point.
- **Issue of Title:** Once title has issued you will usually have 7 to 10 working days to prepare for settlement (the exact number of days will be specified in your agreement). During that time period we will review the new Certificate of Title for your section and ensure that the interests registered against it are those which were originally agreed.



Agreement to buy in a Subdivision

Most developers will have their own sale and purchase agreement specifically drafted for the development you are buying into. These agreements are typically designed to ensure that there are limited opportunities for a purchaser to object to the way a development is carried out or to cancel the agreement. If you have not yet signed an agreement then we recommend that the below points be considered.

- **Sunset Clause:** As noted above, the subdivision process can be lengthy. If a development flounders, say due to difficulties with a developer's funding, then a sunset clause will give you the ability to cancel if the title for your section has not issued by a certain date.
- **Adjustment of Area:** Developers often enter into agreements for sale and purchase before the land they are subdividing has been surveyed. This means that the actual land area you are purchasing may be more or less than that shown on the agreement. Usually an agreement will provide that anything greater than a minor variation of area (say 5% more or less) will result in either an adjustment in the purchase price or in some instances the right of cancellation.
- **Right to object:** Most developers will try to limit a purchaser's ability to object to interests which are registered against the title being sold (such as easements, encumbrances and other interests which can impose obligations on owners of the land). While this is reasonable up to a point, it is important that such interests are only those necessary to enable title to issue and that in all other instances the right to object is retained.
- **Conditions:** As with any agreement for the purchase of land, it is common for the purchaser to require a conditional period to allow time for appropriate investigations to take place. While it is standard for a solicitor's approval clause to be inserted into these sorts of agreements it is important to understand that this sort of clause only allows cancellation where there is an issue with the form or content of the agreement. We recommend that a due diligence condition be included in any agreement to purchase land in a subdivision. The matters which should be considered in any due diligence exercise are noted below.

Due Diligence

If your Sale and Purchase Agreement is subject to a due diligence provision then we recommend that you consider the following matters prior to confirming this condition.

- **Resource Consent:** The resource consent for the development provides useful information concerning any restrictions that are likely to be registered against your property and the nature of the development you are buying into in general.
- **LIM Report:** Because a title has not yet issued for the property Council will not be able to provide you with a lot specific LIM Report. You will however be able to obtain a LIM Report for the land being subdivided. This report will be useful for your due diligence investigation and we recommend that you obtain one.
- **Restrictive Covenants:** It is common place for a developer to register covenants against sections in their developments. Generally the purpose of the covenants is to protect the quality of a development by restricting the types of dwelling which may be erected. As these covenants will impact what is or is not permissible on the property we strongly recommend that you are comfortable with their provisions.
- **Geo-tech Report:** As part of the consenting process, the developer will most likely have been required to obtain a geo-tech report for the land being developed. In our experience, geo-tech reports that relate to all land being developed in a subdivision may not sufficiently detail issues relating to particular sites within the development. If there is any question whatsoever relating to geo-technical issues we strongly recommend you obtain a site specific geo-tech report.