

GUIDE TO Subdivisions



Welcome to **Law North** and **Swift's**

GUIDE TO SUBDIVISIONS.

The subdivision process can be complex as it involves many different parties and if those subdividing don't appreciate the full process it can lead to delays, extra costs and problems with the sale of the newly created lots. This guide gives a brief description of the entire process and a detailed outline of the involvement of our firm in the subdivision process.

INTRODUCTION

Making the decision to subdivide is the start of a process that will see you engaging with the local council, surveyors, lawyers and most likely your neighbours. You will also need to consider consents, tax and GST.

This summary briefly explains the role of the council and the surveyors and then more deeply looks at what the lawyer needs to do. At the end you will find a flow chart to help guide you in the process in terms of who to contact when.

Council

A subdivision cannot start without Council approval (Resource Consent). The District Plan for the area provides the rules for each zone including subdivision and you must obtain Council's consent. Not all subdivisions are automatically permitted, and we recommend the first appointment you make (when considering a subdivision) is with a local surveyor and a Council planner who will be able to tell you what is permitted (and what is not) in your particular zone.

The terms of the resource consent are extremely important. You must comply with these terms. Compliance can be costly. It is therefore important that the terms are carefully considered and that your advisers have input into these. If the terms are unsatisfactory when the consent is issued, discuss the ability to have these amended by appeal as soon as possible.

Remember, there are a considerable number of fees incurred along the way. There will be filing fees (both Council and Land Information New Zealand otherwise known as LINZ); there may be bonds required (securing future work to be completed) and other payments to be made. You should discuss these in detail with your advisers.

Surveyor

Your surveyor will have produced a scheme plan (also known as a concept plan) of your subdivision for the resource consent application. Following issue of the resource consent, your surveyor will complete the survey/field work and prepare a draft survey plan (commonly referred to as LT Plan). You should ensure that the prepared scheme plan captures all the necessary aspects of your subdivision (i.e. easements, amalgamations of land) as once the scheme plan is approved by Council, any variations will require further Council consent.

Once you have approved the survey plan, Council and LINZ shall do likewise. LINZ is the body authorised to approve surveys and eventually issue titles.

Lawyer

We are not usually involved in the resource consent or survey process. However, it assists if we can advise you early in the process as it will avoid pitfalls/delays once your subdivision is well underway. The following is a brief outline of the work undertaken by your lawyer. We also

attach a diagram which identifies when and how each party interacts during the subdivision process.

(a) Resource consent and Approved Scheme Plan

This is your base document for the subdivision and contains all conditions to be met before new titles can issue. It is essential that we obtain a copy and for us to check the conditions. The resource consent may require covenants, encumbrances, road vesting, consent notices etc. When we have checked the resource consent with you, we can prepare the documents that are required to satisfy the consent conditions. It is important that you discuss these with us, as these documents will often result in ongoing obligations being imposed on the land (and benefits the land will receive).

(b) Neighbours

Property development can often involve your neighbours, particularly if your property is the result of previous property development or is located in a built-up area and is therefore subject to existing legal rights. For example, existing easement rights or covenants may need to be surrendered in whole or in part, or you may need your neighbour's consent to either impose rights over their property or change the use of existing easement rights. Any, or all, of these may be required to complete your development.

If your planner/surveyor requires the involvement of a neighbour in relation to a change of existing legal rights, we strongly recommend you discuss your plans with your neighbour before applying for your resource consent. Ideally, you would lock in your neighbour's consent in writing from the outset, including their agreement to sign all documentation when asked to do so. A verbal confirmation from a neighbour is not binding and you could be left in an awkward position if your neighbour refuses to sign the required documentation. Worst case scenario, you would need to begin again without relying on your neighbour.



We point out that the neighbour's consent in this scenario relates to legal rights affecting the land (easements and covenants) rather consent in principle to your subdivision under the Resource Management Act 1991. To clarify the difference: a) consent in principle may be required (prior to applying for a resource consent) to comply with district plan rules and

once obtained, there would be no further involvement with your neighbour; b) Consent from your neighbour relating to changes to legal rights affecting the properties (easements or covenants) will require ongoing involvement (until your subdivision is completed) and we therefore recommend early involvement (meeting in person to discuss your project) and obtaining their consent in writing from the outset as noted above

(c) Survey plan

The surveyor prepares the survey plan which records the location of new easements, land to vest in Council (i.e., roading or esplanade reserve), if any existing rights are to be surrendered, amalgamation of land and any other interests affecting the land.



When we have been through the survey plan with you, we can prepare the documents that are required to create the new titles. Once again, it is essential you involve yourself in this process to enable us to prepare the correct documents. We can only work from the survey plan; if you have specific requirements, you need to let us know.

(d) Preparation of documents

We will prepare all the documentation required to obtain new titles and registration of the rights to be created or existing rights to be surrendered. For example, easements for services (rights of way, drainage of water and/or sewage, power, phone, convey water). If we do not have specific instruction, we will provide a standard document including the implied statutory terms. In many cases, a standard document may not be appropriate and we cannot over-emphasise the importance of discussing your requirements with us.

Some utility companies (especially electricity) will subsidise costs if they receive an easement in their favour ("easement in gross"). If this has been negotiated, we need details at this stage to protect your right to the subsidy.

Once the documents are prepared, we will arrange signing by all interested parties. This can be a time-consuming process if documents need to be signed by neighbours (refer to our comments above), power companies, Chorus, banks, Council etc. There are opportunities for you to assist which will speed up the signing process.

(e) Lodgement for new title

When all the subdivision documents have been signed (by interested parties including your bank), Council has issued its compliance certificates (223 & 224(c)) and the plan has been approved as to survey, we will be in a position to submit the dealing with LINZ and request new titles. Council is responsible for signing off the plan (commonly referred to as the 223 certificate) and signing off the consent conditions (commonly referred to as the 224(c) certificate). Your surveyors will apply to Council for both of these compliance certificates. Prior to issue of the 223 certificate, your surveyor must have completed the field/survey work

and prepared a draft plan (that matches the approved scheme plan). Prior to issue of the 224(c) certificate, all physical works are to be completed and inspected and, in some cases, legal documents completed. It is important that you monitor this process so that completion of the documents and arrival of the sign-off (224(c) Certificate) for the subdivision is coordinated.

Your surveyor will have also been working on the sign-off of the survey plan (plan approval). If your property has access to a Waka Kotahi-New Zealand Transport Agency-controlled road, there will also be a sign-off from NZTA.

When we have the Council sign-off, the surveyor's plan approval and all the appropriate documents in place, we can lodge the application for the new title. At this stage, there will be a further payment of fees due to LINZ for the new title process. These are separate to earlier LINZ fees paid by the surveyor.

(e) Timing



Many people then ask us how long until the new titles issue. It is impossible to give an accurate time frame as Council and LINZ work to their own timeframes according to work load. However, from the time we are in a position to lodge documents, there can be approximately a 4-6 week period until title issues for compliant dealings. There can however be complications that cause delays and, from time to time, shorter

backlogs and it is unwise to rely on any estimate.

Many subdividers sell lots before title issues. A finite date for settlement should not be provided. Settlement should always be a fixed number of days after the issue of title. If a purchaser requires a 'sunset' clause (a clause that gives the purchaser the right to cancel if title has not issued by a certain date) you should provide plenty of time for the title to issue and discuss this with us.

(f) Sale process

It is important that you are able to sell land during the subdivision process. However, it is equally important that care is taken to ensure that sales do not cause problems with the subdivision.

Once again, we recommend you discuss the sales process with us. The more common problems that arise are, failure to identify the area of land being sold or the ability to vary the area, failure to include the correct subdivision plan in the agreement, failure to detail covenants, easements or Council restrictions that will be registered against the title etc.

A set of standard clauses can usually be prepared for each subdivision and supplied to the real estate agents to ensure you do not get into difficulty. These should be discussed with us before you commence marketing the properties and, from time to time, checked to ensure that they are still up to date.

We also point out that in most cases, you cannot rely on the purchaser's deposit to fund your subdivision as you are not entitled to the deposit until after the new title issues.

(g) Tax and GST

As much as we hate to mention these subjects, they need to be considered in relation to any subdivision. We recommend that a good accountant's advice is taken before you start regarding any possible liability for GST or income tax or brightline tax to enable you to plan properly. Don't ignore the issues as, in our experience, the tax man doesn't like being ignored

S u m m a r y

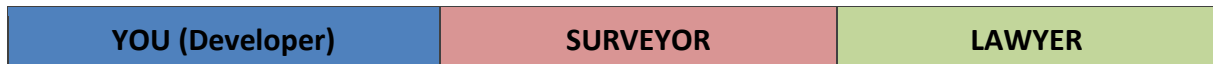
The information above outlines how the key parties interact and the chart below will also help to explain the interactions between the surveyor, your local council and your lawyer. When you are ready to commence your subdivision journey, contact Law North and our specialist Subdivision Team, we can also provide you with advice summaries on covenants and rights to be created.



THE MERIDIAN BUILDING
93 Kerikeri Road, Kerikeri
www.lawnorth.co.nz

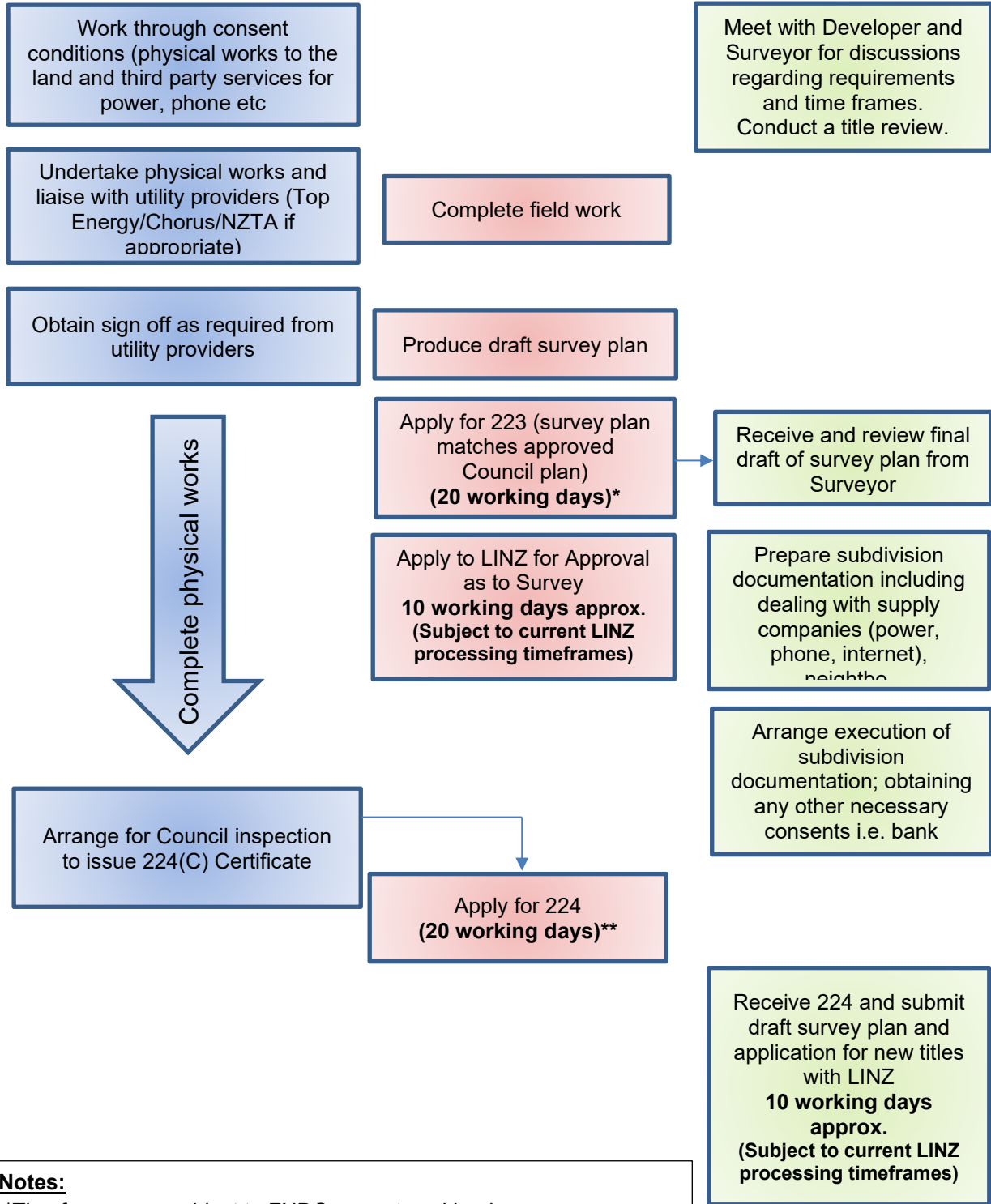
P. 09 407 7099

E. info@lawnorth.co.nz



Developer and surveyor work together to prepare and apply for Resource Consent

Resource Consent Received (send copy to Lawyer)



Notes:
 *Timeframes are subject to FNDC current workloads.
 **Timeframes are subject to FNDC current workloads across the teams i.e. engineering, planning etc