

Transfer and dedication for road

This mechanism is sometimes used to resolve issues that arise when a lot on a plan of subdivision is to become road and that lot may be subject to an easement or land covenant. If the lot was to vest upon deposit of the plan the consent of the dominant owners (and their mortgagees) would otherwise be required (see s224(b) RM Act). This mechanism has been around for a long time and has been suggested by Land Information New Zealand staff as a way to alleviate the seemingly insurmountable problem when there are numerous owners of the dominant land. The authority is not found in the Resource Management Act but is instead found at Section 17(2) of the Public Works Act 1981.

From LINZ's and the subdividing owners point of view it is a simple solution because LINZ only need to accept the Transfer dedicating the allotment for road and that is the end of their involvement in the matter.

Unfortunately, prior to the registration of the Transfer there is quite a procedure that council must adhere to under Section 18 of the Public Works Act 1981 which includes amongst other things serving notice on every person with a registered interest in that land i.e. the dominant owners (and their mortgagees).

I can confirm that LINZ have been accepting these Transfers without requiring the aforesaid consents or any extinguishment of the land covenant. While this mechanism may be convenient for the subdividing owner the result may not be as desirable for the Council because even when the Transfer is registered the land covenant is not extinguished (unlike the vesting provisions in the Resource Management Act 1991) and the burden of which will pass to the new owner of the land i.e. Council.

In my opinion the authority under s 17 PW Act has been taken completely out of context and should not be used on subdivision plans. Local authorities should be aware of any likely ramifications of allowing a transfer and dedication of road.

For example, I buy into a lifestyle block subdivision and everything is peaceful and idyllic. Then the district plan changes and I wake up one Sunday morning to a subdivision going in next door and the nature of what I bought into has changed completely. By allowing the subdivision to be approved with the road lot to be dedicated someone like myself as the dominant owner under a land covenant has had my indefeasible title extinguished by a council who allows the plan to be approved when it does not follow the requirements of the Resource Management Act. Instead it relies on an authority in the Public Works Act to take the land for road – and almost certainly the correct procedure under that Act has not been followed – otherwise my consent would have been sought.



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