

Resource Management Amendment Act 1997

Purpose

1. The above legislation, which came into force on 17 December 1997, amends numerous provisions of the Resource Management Act 1991. This article explains the amendments which impact on the plan deposit process and sets out revised precedents for subdivisional approval and other matters in accordance with the new requirements.

Conditions of Resource Consents

2. Section 24 of the amendment Act modifies s108 of the principal Act. The provisions concerning bonds and covenants remain the same, although they are now contained in paragraphs (b) and (d) respectively of s108(2). Consequential amendments have been made to the registration provisions in s109 and to various other sections, including s224(c)(iii) and s245 (see s25, s42(1) and s49 of the amendment Act).
3. The new s108(2)(f) (which replaces the former s108(1)(f)) provides that conditions under s220 may be imposed in respect of a subdivision consent despite any limitation under s105(1)(a) or (b).

Meaning of “subdivision of land”

4. The original definition of “allotment” in s218(2) of the principal Act did not include the residue of land in a subdivision. As noted in Issue No 25 of the *Land Titles Bulletin* (see para 1.7 on page 3), this meant that territorial authorities were precluded from requiring esplanade reserve to be set aside in respect of the balance of the land in a subdivision. The same issue arose in connection with esplanade strips (see s237).
5. Section 39 of the amendment Act overcomes this obstacle by extending the definition of “allotment” to include balance land. This has been achieved by adding the following subsection to section 218 of the principal Act:
“(4) For the purposes of subsection (2), the balance of any land from which any allotment is being or has been subdivided is deemed to be an allotment.”
6. It appears that this amendment was also intended to tidy up other anomalies relating to subdivisions of balance or part allotments. As a part lot is now deemed to be an allotment, a division of it will be a subdivision for the purposes of Part X of the Resource Management Act 1991 and approval under s223 will be required. However it is doubtful

that the loophole has been closed completely, as the balance has to be or have been created by an earlier subdivision (as defined in terms of the Resource Management Act) rather than by some action that does not amount to a subdivision.

Completion Certificates

7. Section 222(1) of the principal Act has been amended to provide for the issue of a completion certificate where a condition of subdivision consent requiring a financial contribution has been satisfied (see s40 of the amendment Act).

Approval of survey plan by territorial authority

8. The use of common seals has been abolished in respect of approvals under section 223 of the principal Act (see s41 of the amendment Act). The provisions of that section now require the approval certificate to be signed by the principal administrative officer or other authorised officer of the territorial authority. The new formats for approvals under s223 are set out below:

(a) s223 Approval - standard format

“I hereby certify that this plan was approved by the [XYZ City/District Council] pursuant to section 223 of the Resource Management Act 1991

on the _____ day of _____ 19 _____.

[Principal Administrative Officer/ Authorised Officer]”

(b) s223 Approval - no conditions imposed

“ I hereby certify that this plan was approved by the [XYZ City/District Council] pursuant to section 223 of the Resource Management Act 1991 on the _____ day of _____ 19 _____ and no conditions have been imposed.

[Principal Administrative Officer/ Authorised Officer]”

(c) s223 Approval - incorporating s224(c) certificate

“I hereby certify that this plan was approved by the [XYZ City/District Council] pursuant to section 223 of the Resource Management Act 1991 on the _____ day of _____ 19 ____ and, for the purposes of Section 224(c) Resource Management Act 1991, that some/none of the conditions of the subdivision consent have been complied with to the satisfaction of the said Council and that a completion certificate/and/or consent notice has/have been issued and/or a bond has been entered into in respect of those conditions that have not been complied with.

[Principal Administrative Officer/ Authorised Officer] ”

N.B. Use of the above format is not mandatory. The s224(c) certificate may also be separately endorsed on the plan or lodged as document.

(d) s223 Approval - incorporating easement or amalgamation condition

“ I hereby certify that this plan was approved by the [XYZ City/District Council] pursuant to section 223 of the Resource Management Act 1991 on the _____ day of _____ 19 ____ subject to the granting or reserving of the easements(s) set out in the Memorandum hereon [and/or subject to the amalgamation condition(s) set out hereon] etc

[Principal Administrative Officer/ Authorised Officer] ”

(e) s223 Approval - incorporating certificate referring to amalgamation covenant

“ I hereby certify that this plan was approved by the [XYZ City/District Council] pursuant to section 223 of the Resource Management Act 1991 on the _____ day of _____ 19 ____ and that the owner(s) has/have entered into a covenant pursuant to Section 220(2)(a) of the said Act [see Consultation Number _____]

[Principal Administrative Officer/ Authorised Officer] ”

9. Approvals may involve a combination of two or more of the above certificates.

Restrictions upon deposit of survey plan

10. The wording for certificates pursuant to s224(f) of the principal Act has been modified by section 42(2) of the amendment Act. The new wording is set out below:

“ Pursuant to Section 224(f) of the Resource Management Act 1991 I hereby certify that the [XYZ City / District Council] is satisfied on reasonable grounds that every existing building or part of an existing building [including any building or part thereof under construction] shown on this plan complies with [or will comply with] the provisions of the building code specified in Section 46(4) of the Building Act 1991.

Dated this _____ day of _____ 19____

[Principal Administrative Officer/Authorised Officer]

Cancellation of prior approvals

11. Section 227(1) of the principal Act previously operated to save underlying amalgamation conditions where a new plan of subdivision was deposited under section 224 of the Resource Management Act 1991. A separate cancellation notice was usually required to be registered to remove redundant conditions in such cases.
12. Section 43 of the amendment Act has addressed this issue by removing the references to s240 and s241 from s227(1) of the principal Act. This means that any underlying amalgamation conditions will automatically be cancelled upon deposit of a new plan of subdivision under s224.
13. It should be noted however that nothing has changed in regard to underlying compulsory easement conditions. Such conditions will still survive the later subdivision.

Creation of esplanade strips by agreement

14. Section 235(1) of the principal Act provides that certain sections of the Act relating to esplanade strips created upon subdivision apply to esplanade strips created by agreement with all necessary modifications. Section 44 of the amendment Act amends this provision by excluding the references to s233, s236, ss(1) and ss(3) to (5) of s237, s237A, s237B and s237D.

15. The exclusion of s233 seems somewhat strange as it contains the provisions which enable the esplanade strip to move with any shift in the position of the adjacent water boundary. It would appear that this now only applies to esplanade strips created upon subdivision. Any change in the position of the water boundary in relation to an esplanade strip created by agreement will presumably have to be dealt with by cancelling the existing esplanade strip instrument and registering a fresh one.
16. The rationale for this amendment is otherwise fairly obvious as the remainder of the excluded provisions clearly do not relate to esplanade strips created by agreement.

Covenants against transfer of allotments

17. Section 240(3) of the principal Act originally required amalgamation covenants to be executed by the territorial authority under common seal. That requirement has been removed and such covenants must now be signed by the principal administrative officer or other authorised officer of the territorial authority (see s46(1) of the amendment Act).
18. The provisions relating to cancellation of amalgamation covenants have also been modified. The original s240(5)(b) provided that cancellation following approval as to survey must be effected by forwarding to the DLR an authenticated copy of the resolution of the territorial authority revoking the covenant.
19. This has been replaced with a new provision which requires such cancellations to be effected in the form of a certificate signed by the principal administrative officer or other authorised officer of the territorial authority (see s46(2) of the amendment Act). A precedent for such a certificate is set out below:

“ In the matter of [Deposited] Plan _____ and pursuant to section 240(5)(b) Resource Management Act 1991 I hereby certify that the _____ [XYZ City/District Council] has cancelled the amalgamation covenant referred to in the certificate endorsed on the said Plan [and registered under number _____].

Dated this _____ day of _____ 19_____

[Principal Administrative Officer/Authorised Officer] ”

Amalgamation of allotments

20. Section 241(4)(b) of the principal Act, which provides for cancellation of amalgamation conditions, has been amended in a similar fashion to section 240(5)(b) (see s47 of the amendment Act and refer to the commentary in paragraphs 18 and 19 above). A precedent for such a cancellation is set out below:

“ In the matter of [Deposited] Plan _____ and pursuant to section 241(4)(b) Resource Management Act 1991 I hereby certify that the _____ [XYZ City/District Council] has cancelled the amalgamation condition(s) endorsed on the said Plan.

Dated this _____ day of _____ 19 _____

[Principal Administrative Officer/Authorised Officer] ”

Survey plan approved subject to grant or reservation of easements

21. The provisions relating to the cancellation of conditions as to easements have also been modified. The original s243(f)(ii) provided that cancellation following approval as to survey must be effected by forwarding to the DLR an authenticated copy of the resolution of the territorial authority cancelling the condition as to easements.
22. This has been replaced with a new provision which requires such cancellation to be effected in the form of a certificate signed by the principal administrative officer or other authorised officer of the territorial authority (see s48 of the amendment Act). A precedent for such a certificate is set out below:

“ In the matter of [Deposited] Plan _____ and pursuant to section 243(f)(ii) Resource Management Act 1991 I hereby certify that the _____ [XYZ City/District Council] has cancelled the condition as to the easements set out in the Memorandum of Easements endorsed on the said Plan.

Dated this _____ day of _____ 19 _____

[Principal Administrative Officer/Authorised Officer] ”

Transitional provisions

23. It is important to note that the transitional provisions in section 78 of the amendment Act require the principal Act to be applied as if the amendment Act had not been passed in certain circumstances. Subsection (6) is of particular relevance:

“(6) Where, before the commencement of this section, an application for a subdivision consent has been made or a subdivision consent has been granted, all proceedings in relation to that subdivision, including the approval and deposit of any survey plan, must be considered and completed under the principal Act as if this Act had not been enacted.”

24. This means that the requirements in force prior to 17 December 1997 will continue to apply in respect of a subdivision where the application for subdivision consent was made before that date.

25. Therefore some plans will still require approval in the traditional manner (i.e. under common seal), even where the date of approval falls on or after 17 December 1997. Plans approved prior to 17 December 1997 cannot be deposited unless the common seal of the territorial authority has been affixed.



Brendan Boyle

Registrar-General of Land



Tony Bevin

Surveyor-General