



Interim guideline for Unit Titles Act 2010

LINZG20720

1 June 2011

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Terms and definitions

Introduction

- For the purposes of this guideline, the terms and definitions in the Unit Titles Act 2010 (Act) apply unless stated otherwise. Refer to ss 5-9, 19, of the 2010 Act for interpretation.
 - Terms and definitions used in this guideline that are not defined in the 2010 Act are defined below.
 - Any reference to a section in this guideline is a reference to that section of the 2010 Act.
-

Term/abbreviation	Definition
1972 Act	Unit Titles Act 1972
2010 Act	Unit Titles Act 2010
FDU	future development unit
LTA	Land Transfer Act 1952
LINZ	Land Information New Zealand
PUD plan	proposed unit development plan
Regulations	Unit Titles Regulations 2011
RMA	Resource Management Act 1991
SPUD plan	substituted proposed unit development plan
standard development	unit development that is created on deposit of the plan and is neither a layered nor a stage development (ss 16-18 of the 2010 Act)

Foreword

Introduction

- The Unit Titles Act 1972 is repealed by the Unit Titles Act 2010 [s 218].
 - The Unit Titles Act 2010 (Act) and the Unit Titles Regulations 2011 (Regulations) came into force on [20 June 2011].
 - The 2010 Act's purpose is to provide a legal framework for the ownership and management of multi-unit developments by communities of individual owners [s 3].
-

Purpose of guideline

This guideline has been issued by the Registrar-General of Land (Registrar) to ensure that plans and instruments received by Land Information New Zealand (LINZ) under the 2010 Act:

- are dealt with correctly,
 - contain all the necessary prerequisite instruments, plans, authorisations, consents, certificates, and any other matter specified by the 2010 Act, and
 - all computer registers issued are in accordance with the 2010 Act.
-

Scope

- This document contains guidelines for best practice compliance with the 2010 Act. It covers:
 - requirements for certificates, applications, and other documents to be lodged with the Registrar, and
 - other general registration matters.
 - This guideline focuses primarily on the provisions of the 2010 Act that impact on the registration and plan deposit processes.
 - This document does not focus on provisions of other Acts such as the Resource Management Act 1991 (RMA) except to the extent that other Acts are specifically mentioned in the 2010 Act.
 - This guideline supplements but does not reiterate statutory requirements specified in the 2010 Act or any other Act.
-

Foreword, continued

Intended use of guideline

This guideline has been issued by the Registrar for:

- employees of LINZ with delegated authority to exercise registration functions under the Land Transfer Act 1952 (LTA), and
 - practitioners who lodge unit title dealings with LINZ.
-

References

The following are necessary for the application of this guideline:

- Unit Titles Act 2010
 - Unit Titles Regulations 2011
 - Land Transfer Act 1952
 - Resource Management Act 1991
 - LINZ 2010, *Rules for Cadastral Survey 2010*, Office of the Surveyor-General, LINZ, Wellington
-

Types of unit title developments

1. Overview

Introduction This chapter describes the following topics for different unit title developments.

Contents This chapter contains the following topics:

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Standard unit developments	12
Layered and subsidiary unit title developments	16
Stage unit title developments	21
Redevelopments	36

Standard unit developments

2. Standard unit developments

- Introduction**
- (a) This relates to subdivision of land into units in a single stage as described in detail in s 16.
 - (b) Subparts 1, 4, 5, 6, 7, and 8 of Part 2 of the 2010 Act specifically apply to unit title developments.
-

- Background**
- (a) When the unit plan is deposited, a stratum estate is created in each principal unit and each accessory unit. The stratum estate comprises the estates and beneficial interests as set out in the 2010 Act [s 18].
 - (b) Once a stratum estate has been created, the stratum estate and the base land may be dealt with in accordance with ss 50 - 53.
-

Application lodged An application to deposit a unit plan is made under s 17(2).

- Application requirements**
- The application for deposit of a unit title plan is required to:
- (a) include all certificates, approvals, and consents which may either accompany the unit plan or be lodged for registration as part of the plan deposit dealing,
 - (b) be made in the prescribed form (Form 1, Schedule 2 of the Regulations), and
 - (c) be made by the registered proprietor as described in s 16(1).
-

- Plan requirements**
- The unit plan must:
- (a) specify the units in relation to any building erected on the land [s 17(1)], and
 - (b) be approved as to survey [s 32(2)(c)].
-

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Standard unit developments, continued

Land free of limitations and held in one computer register

- (a) The computer register for the land being subdivided will need to be free from all limitations as to parcels or title. Any limitations must be removed before the plan can be deposited [s 32(1)(a)].
 - (b) The land to which the plan relates is to be held in only one computer register and should be the whole of the land in that computer register [s 32(1)(b) and (c)]. However, if one computer register could be issued for that land, the plan can be deposited notwithstanding s 32(1)(b) and (c) [s33(1)].
-

Consent of other interest holders

- (a) All proprietors of interests set out in s 32(1)(d) are required to consent in writing to the plan.
Note: The 2010 Act states that the consent must be in writing but it may also be lodged electronically under the authorisation of the Electronic Transactions Act 2002.
 - (b) The consent may be made by an agent¹ and may accompany the plan or be lodged as a separate document with the plan deposit dealing [s 33(2)].
-

Certificates to accompany plan or application to deposit plan

The following certificates are required to accompany the plan or application to deposit:

- (a) subdivisional approval under s 223 of the RMA,
- (b) a certificate under s 224(c) of the RMA,
- (c) a certificate under s 224(f) of the RMA,
- (d) a certificate under s 32(2)(a) by the territorial authority in the prescribed form (Form 28, Schedule 2 of the Regulations), and
- (e) a certificate under s 32(2)(b) by a registered valuer showing the ownership interest in the prescribed form (Form 5, Schedule 2 of the Regulations).

Note:

- This certificate should be part of the plan deposit dealing as it is recorded against the SRS.
 - Every principal unit and accessory unit must be assigned an ownership interest [s 38(1)(a)].
-

continued on next page

¹ No evidence of agency required other than the statement of agency.

Standard unit developments, continued

Documents that may accompany the application to deposit plan

The application to deposit the plan must be accompanied by a notice in the prescribed form (Form 3, Schedule 2 of the Regulations) setting out the utility interests for each unit where this differs from the ownership interest.

Note: Although a utility interest must be assigned for every unit [s 39(1)], notification is not mandatory if the value is the same as that for the ownership interest [s 39(2)].

Registration actions on deposit of unit plan

On deposit of a unit plan, the Registrar will:

(a) create a computer register in the name of the registered proprietor (not the body corporate) of the base land (defined in s 5), [s 16(1)], for the stratum freehold or leasehold estate, as the case may be, in all of the units shown on the unit plan [s 43(1)], or

(b) if requested by the owner, create a separate computer register for the stratum estate in any principal unit or units [s 43(2)],

Note: A computer register for principal units may include one or more accessory units [s 43(3)].

(c) cancel the existing computer register for the base land [s 43(1)(b)],

(d) where the unit plan relates to a leasehold or licence estate, note an appropriate memorial on the computer register for the leasehold or licence [s 43(1)(c)], and

(e) issue a supplementary record sheet and record on it:

(i) the ownership of the common property [s 47(a) and (b)],

(ii) any interests affecting the base land and the common property [s 47(c)(i)] and any other matters [s 47(c)(ii)].

Note: There is a significant change to the 1972 Act in that the body corporate is the owner of common property. (see [Ownership of common property, page 44](#))

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Standard unit developments, continued

Restrictions on issuing title

The Registrar will not create a computer register for:

- (a) the base land [s 45(a)],
 - (b) the common property [s 46],
 - (c) an accessory unit without an accompanying principal unit [s 53(2)], or
 - (d) any component part of a stratum estate [s 45(c)].
-

Layered and subsidiary unit title developments

3. Layered and subsidiary developments

Introduction

- (a) For general discussion on layered development and its component parts, see [Layered and subsidiary unit title developments, page 86](#).
 - (b) Each unit development layer may support more than one subsidiary development. However, only one subsidiary development may be created out of each principal unit and associated accessory units.
 - (c) Each subsidiary unit development may be used for different purposes, such as retail, commercial, or residential. To manage the different functions, each subsidiary unit development has its own body corporate which can make rules that best suit the function of the subsidiary unit development.
 - (d) Subsidiary unit developments may be created either via a standard unit development or via a stage development.
 - (e) The rules as to stage development plans apply to subsidiary unit development plans done in stages.
 - (f) Subparts 2 - 8 of Part 2 specifically apply to unit title developments.
-

Background

When the subsidiary unit development plan is deposited, a stratum estate is created in each principal unit and each accessory unit. The stratum estate comprises the estates and beneficial interests set out in s 22.

Once a stratum estate has been created, the stratum estate and the base land may be dealt with in accordance with ss 50 - 53.

Application lodged

An application to deposit a subsidiary unit title plan is made under s 21(2).

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Layered and subsidiary developments, continued

Application requirements

The application for deposit of a subsidiary unit plan is required to:

- (a) be in the prescribed form (Form 1, Schedule 2 of the Regulations) [s 21(2)(a)],
 - (b) have been made by the owner of the principal unit being subdivided [s 21(2)], and
 - (c) be accompanied by a copy of the special resolution by the body corporate required by s 20 (4) [s 21(2)(b)].
-

Plan requirements

The subsidiary unit plan must:

- (a) identify the principal unit being subdivided,
- (b) specify the principal units, accessory units (if any) and common property that make up the subsidiary unit title development [s 21(1)(b)],
- (c) show the relationship of the subsidiary development to all other unit developments in the layered development [s 21(1)(c)].

Note: The subsidiary unit plan will depict the new subsidiary units on the principal unit (and accessory unit if any). The relationship of the subsidiary development with each unit development in the layered development can be shown by diagram in the same manner as Examples 2 and 3 in Schedule 1 to the Act. The deposited plan reference numbers for the head and every parent and subsidiary unit development should be shown.

- (d) be approved as to survey [s 32(2)(c)].
-

Consents of other registered interest holders

- (a) All proprietors of interests set out in s 32(3)(a) are required to consent in writing to the plan.

Note: The 2010 Act states that the consent must be in writing but it may also be lodged electronically under the authorisation of the Electronic Transactions Act 2002.

- (b) The consent may be made by an agent² [s 33(2)] and may accompany the plan or be lodged as a separate document with the unit plan deposit dealing.
-

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² No evidence of agency required other than the statement of agency

Layered and subsidiary developments, continued

Certificates to accompany a subsidiary unit development plan or application to deposit plan

The following certificates are required to accompany the plan or application to deposit.

- (a) subdivisational approval under s 223 of the RMA,
- (b) a certificate under s 224(c) of the RMA,
- (c) a certificate under s 224(f) of the RMA,
- (d) a certificate under s 32(2)(a) by the territorial authority in the prescribed form (Form 28, Schedule 2 of the Regulations),

Note: The 2010 Act states that the consent must be in writing but it may also be lodged electronically under the authorisation of the Electronic Transactions Act 2002.

- (e) a certificate under s 32(2)(b) (see also s 38(1)) by a registered valuer showing the ownership interest for each new unit in the prescribed form (Form 5, Schedule 2 of the Regulations),

Note: The certificate should be part of the plan deposit dealing as it is recorded against the SRS.

- (f) a certificate under s 32(3)(b) by a registered valuer showing the ownership interest of the principal unit being subdivided to create the subsidiary unit title development in the prescribed form (Form 5, Schedule 2 of the Regulations),

Note: The certificate should be part of the plan deposit dealing as it is recorded against the SRS.

- (g) a certificate under s 216 [s 20(5)] by the body corporate in the prescribed form (Form 33, Schedule 2 of the Regulations).

Note: The certificate should be part of the plan deposit dealing as it is recorded against the SRS.

Documents that may accompany an application to deposit plan

The application to deposit the plan must be accompanied by a notice in the prescribed form (Form 3, Schedule 2 of the Regulations) setting out the utility interests for each unit where this differs from the ownership interest.

Note: Although a utility interest must be assigned for every unit [s 39(1)], notification is not mandatory if the value is the same as that for the ownership interest [s 39(2)].

continued on next page

Layered and subsidiary developments, continued

Registration actions on deposit of subsidiary unit development plan

On deposit of a subsidiary unit development plan, the Registrar will:

- (a) create a computer register in the name of the registered proprietor of the principal unit that has been subdivided for the stratum estate in all of the units shown on the subsidiary unit development [s 44(1)(a)], or
- (b) if requested by the owner of the principal unit that has been subdivided, create a separate computer register for any principal unit or units in the subsidiary unit development [s 44(2)],

Note: A computer register for principal units may include one or more accessory units [s 44(3)].

- (c) cancel the existing computer register for the principal unit that has been subdivided [s 44(1)(b)],
- (d) issue a supplementary record sheet and record on it:
 - (i) the ownership of the common property [s 47(a) and (b)],
 - (ii) any interests affecting the base land and the common property [s 47(c)(i)] and any other matters [s 47(c)(ii)]
- (e) record³ on the supplementary record sheet for each other unit title development in the layered development details of this subsidiary unit development [s 48(a)]

Note: Section 48(a) could be read as requiring a separate memorial recording each subsidiary unit development. However, compliance with s 21(1)(c) will result in the depiction of the whole of the layered development, and the linkage on the supplementary record sheet with the subsidiary unit plan that shows this will satisfy s 48(a).

- (f) record on the supplementary record sheet for the parent unit title development of this subsidiary unit development the reassessed ownership interest of the principal unit being subdivided [ss 48(b) and 32(3)(b)].

continued on next page

³ 'Record' means retained as part of the plan documentation

Layered and subsidiary developments, continued

Restrictions on issuing title

- (a) The Registrar will not create a computer register for
 - (i) the subdivided principal unit [s 45(b)],
 - (ii) any component part of the stratum estate as described in s 22(2) [s 45(c)], and
 - (iii) the common property [s 46].
- (b) The Registrar will not register any dealing with the principal unit that was subdivided unless it has been expressly provided for by statute [s 51].

Note: The principal unit that is subdivided to create the subsidiary unit development remains a principal unit in its own unit title development [s 22(3)].

Stage unit title developments

4. Overview

Introduction

- (a) A subdivision of a parcel of land or the subdivision of a principal unit may be done in stages [s 23(1)].
- (b) Subdivision in stages is effected by the successive deposit of:
 - (i) a PUD plan and a first stage unit plan, and
 - (ii) one or more (if any) stage unit plans, and
 - (iii) a complete unit plan.

[s 24(2)]

Note: For changes to s 224(c) RMA certificates, see [RMA certifications for stage unit developments, page 89](#).

- (c) All the units and the common property on each stage and the complete unit plan need to be consistent with their definition on the PUD plan [s (5)].
 - (d) Except as provided otherwise, the whole of the 2010 Act applies to stage unit developments [s 23(2)] and, in particular, the requirements in subpart 4 of Part 2 apply to each unit plan in a stage development [s 31(1)].
-

Background

- (a) When the first stage unit plan of a unit development plan is deposited, a stratum estate is created in each principal unit, each accessory unit, and each FDU (as defined in s 5). The stratum estate comprises the estates and beneficial interests set out in ss 18 and 27.
 - (b) Once a stratum estate has been created, the stratum estate and the base land may be dealt with in accordance with ss 50 - 53.
-

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5. Proposed and first stage unit plans

Application lodged An application to deposit a PUD plan and a first stage unit plan is made under s 24(3).

Plan requirements Two plans are required:

- (a) a PUD plan (which shows all the units and common property as they will appear when the development is completed [s 25(1)], and
- (b) a first stage development plan showing
 - (i) each unit and the common property so far completed and
 - (ii) the balance as one or more FDUs. [s 25(2)].

Note: These two plans must be deposited concurrently [s24(2)(a)] and each plan must be approved as to survey [s 32(2)(c)].

Application requirements The application for deposit of a PUD plan and first stage plan is required to:

- (a) be in the prescribed form (Form 1, Schedule 2 of the Regulations), and
- (b) be made by the registered proprietor described in s 16(1) in the case of a subdivision of land [s 24(3)], or
- (c) be made by the registered proprietor of the principal unit and associated accessory unit (if any) in the case of a subdivision of that or those units [s 24(4)].

Land free of limitations and held in one computer register

- (a) The computer register for the land being subdivided will need to be free from all limitations as to parcels or title. Any limitations must be removed before the plan can be deposited [s 32(1)(a)].
- (b) The land to which the plan relates is to be held in only one computer register and should be the whole of the land in that computer register [s 32(1)(b) and (c)]. However, if one computer register could be issued for that land, the plan can be deposited notwithstanding s 32(1)(b) and (c) [s 33(1)].

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Proposed and first stage unit plans, continued

Consents for a PUD plan for a subdivision of land

- (a) All proprietors of interests set out in s 32(1)(d) are required to consent in writing to the plan.

Note: The consents may be made by an agent and may accompany the plan or be lodged as a separate document with the unit plan deposit dealing [s 32(2)].

- (b) If the land is held under lease or licence, the lessor or licensor is also required to consent [s 32(1)(d)].

- (c) The consent may be made by an agent and may accompany the plan or be a separate document lodged with the unit plan deposit dealing [s 33(2)].

Note: Although s 32(1)(d) applies literally to each plan, if the consents are given in respect of the PUD plan, the Registrar will not require those consents to be repeated for each stage, including the first stage plan.

Consents for a PUD plan for a subdivision of a principal and associated accessory unit

- (a) All proprietors of interests set out in s 32(3)(a) affecting the principal unit are required to consent in writing to the plan.

Note: The consents may be made by an agent and included as part of the plan or as a separate document lodged with the unit title dealing [s 32(2)].

- (b) Although s 32(1)(d) applies literally to each plan, if the consents are given in respect of the PUD plan, the Registrar will not require those consents to be repeated for each stage including the first stage plan.
-

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Proposed and first stage unit plans, continued

Certificates to accompany PUD plan/first stage plan or application to deposit plan

The following certificates are required to accompany the plans or application to deposit:

- (a) subdivisional approval under s 223 of the RMA (PUD plan),
- (b) a certificate under s 224(c) of the RMA (PUD plan or first stage),

Note:

- The s 224(c) certificate may be given in respect of either the PUD plan or the first stage plan. If the PUD plan, it is not required on subsequent stage development plans or the complete unit plan. If the first stage plan, another s 224(c) certificate must be produced with each later stage plan and the complete unit plan [s 28].
- The s 224(c) certificate wording will be governed by s 29.
- The general relationship of the RMA to stage developments is set out in ss 28 and 29.

- (c) a certificate under s 224(f) of the RMA (PUD plan),
- (d) a certificate under s 32(2)(a) setting out the matters referred to in that section and in s 25(5) by an authorised officer of the territorial authority in the prescribed form (Form 28, Schedule 2 of the Regulations),
- (e) certificates under s 32(2)(b) by a registered valuer in the prescribed form (Form 5, Schedule 2 of the Regulations) showing:
 - (i) for the PUD plan, the proposed ownership interest of each proposed principal and accessory unit, and
 - (ii) for the first stage unit plan, the ownership interest of each developed principal and accessory unit,

Note:

- This certificate should be part of the plan deposit dealing as it is recorded against the SRS.
- The proposed ownership interest for each FDU is calculated in accordance with s 38(4).

- (f) a certificate by a registered valuer, in the case of a subdivision of a principal unit, assessing the ownership interest of that principal unit [s 32(3)(b)] in the prescribed form (Form 5, Schedule 2 of the Regulations).

Note: This certificate should be part of the plan deposit dealing as it is recorded against the SRS.

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Proposed and first stage unit plans, continued

Documents that may accompany application to deposit the plans

- (a) The following may accompany the application to deposit the PUD plan/first stage plan:
- (i) a document by the subdividing owner showing the utility interest for any principal or accessory unit shown on the first stage plan [s 39(1)],
- Note:** This document is only required if the utility interest differs from the ownership interest [s 39(2)].
- (ii) a document by the subdividing owner showing the deemed utility interest for any FDU shown on the first stage plan,
- Note:**
- This document is only required if the FDU is being used as a place of residence or business [s 40(1)].
 - The deemed utility interest is assessed in accordance with s 40(2).
- (b) The assessment for (i) and (ii) may be combined in the same document, and
- (c) Form 3, Schedule 2 of the Regulations may be used to notify utility interests [s 39(2)].

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Proposed and first stage unit plans, continued

Registration actions on deposit of PUD plan and first stage development plan

On deposit of the PUD plan and the first stage development plan, the Registrar will:

- (a) create a computer register in the name of the registered proprietor (not the body corporate) of the base land or principal unit subdivided for the stratum estate in all the principal, accessory, and FDUs shown on the first stage plan [ss 43(1)(a) or 44(1)(a)],
- (b) if requested by the owner, issue a separate computer register for any principal unit and accessory unit and any FDUs shown on the stage plan [s 43(2) or s 44(2)],

Note: Computer registers for principal units may include one or more accessory units [s 43(3) and 44(3)].

- (c) cancel the existing computer register for the subdivided land or principal unit [s 43(1)(b) and 44(1)(b)],
- (d) where the unit plan relates to a leasehold or licensee estate, note an appropriate memorial on the computer register for the leasehold or licence,
- (e) issue a supplementary record sheet and record on that supplementary record sheet:
 - (i) the ownership of the common property [s 47(a) and (b)],
 - (ii) interests affecting the base land and the common property [s 47(c)(i)] and any other matters [s 47(c)(ii)],
- (f) record on the supplementary record sheet for each other unit title development in the layered development details of this subsidiary unit development [s 48(a)], and
- (g) record on the supplementary record sheet for the parent unit title development of this subsidiary unit development the reassessed ownership interest of the principal unit being subdivided [ss 48(b) and 32(3)(b)].

Restrictions on issuing title

The Registrar will not issue a computer register for:

- (a) the base land (the FDUs being converted in the first stage) [s 45(a)],
 - (b) the common property [s 46],
 - (c) proposed units within an FDU, or
 - (d) any component part of a stratum estate [s 45(c)].
-

6. Further stage unit plans

Introduction

This section applies if a PUD plan and the first stage plan have already been deposited and a further stage plan is lodged.

Once a stratum estate has been created, the stratum estate may be dealt with in accordance with ss 50 - 53.

Application lodged

An application to a further stage unit plan is made under s 24(2)(b).

Application requirements

The application for deposit of a further stage unit plan is required to:

- (a) be in the prescribed form (Form 1, Schedule 2 of the Regulations), and
 - (b) be made by the registered proprietor of the FDUs being developed into principal and accessory units and common property [s 24(3)].
-

Plan requirements

The stage development plan will comply with s 25(2) if it:

- (a) shows all the principal and accessory units and common property that have been erected or developed (completed),
- (b) shows the balance (uncompleted) as future developments units, and

Note: A stage plan will be deposited in substitution for the previously deposited stage unit plan [s 25(4)]

- (c) has been approved as to survey [s 32(2)(c)].
-

continued on next page

Further stage unit plans, continued

Certificates to accompany further stage unit plan or application to deposit plan

The following certificates are required to accompany the plan or application to deposit the plan:

- (a) a certificate under s 224(c) of the RMA,

Note: If the certificate under s 224(c) of the RMA has been provided with the PUD plan, it is not necessary to provide one for each stage development plan.

- (b) a certificate under s 32(2)(a) setting out the matters referred to in that section by an authorised officer of the territorial authority with additional certification as required by s 25(5) in relation to the stage in the prescribed form [Form 28, Schedule 2 of the Regulations], and

- (c) a certificate under s 32(2)(b) by a registered valuer showing the ownership interest [*and proposed ownership interest*] in the prescribed form (Form 5, Schedule 2 of the Regulations).

Note:

- A new certificate under s 32(2)(b) is required although one will have been given in respect of the PUD plan. The new certificate will show the ownership interest for the developed units and the proposed ownership interests for the future developments.
- This certificate should be part of the plan deposit dealing as it is recorded against the SRS.

Note:

- Although s 32(1)(d) applies literally to each plan, if the consents are given in respect of the PUD plan, the Registrar will not require those consents to be repeated for each stage plan.
- Section 32(1)(a)-(c) will not apply here as the requirements will have been met at the PUD plan and first stage plan phase.

continued on next page

Further stage unit plans, continued

Documents that may accompany application to deposit plan

- (a) The following may accompany the application to deposit the stage unit plan:
 - (i) a document by the subdividing owner showing the utility interest for any principal or accessory unit shown on the stage plan [s 39(1)],
Note: This document is only required if the utility interest differs from the ownership interest [s 39(2)].
 - (ii) a document by the subdividing owner showing the deemed utility interest for any FDU shown on the stage plan,
Note: This document is only required if the FDU is being used as a place of residence or business [s 40(1)].

The deemed utility interest is assessed in accordance with s 40(2).
- (b) The assessment for (a) and (b) may be combined in the same document.
- (c) Form 3, Schedule 2 of the Regulations may be used to notify utility interests [s 39(2)].

Registration actions on deposit of stage unit plan

- On deposit of a stage unit plan, the Registrar will:
- (a) create a computer register in the name of the registered proprietor (not the body corporate) of the stratum estate in all of the newly developed units shown on the stage development plan [ss 43(1)(a) or 44(1)(a)],
 - (b) if requested by the registered proprietor, create a separate computer register for any principal unit and any FDUs [ss 43(2) 44(2)] and, and
Note: Computer registers for principal units may include one or more accessory units [ss 43(3) or 44(3)].
 - (c) cancel the existing computer registers for the FDU that is being converted into principal and accessory units on the stage plan [s 43(1)(b)].

continued on next page

Further stage unit plans, continued

Restrictions on issuing title

The Registrar will not create a computer register for:

- (a) the base land (the FDUs being converted at this stage) [s 45(a)],
 - (b) the common property [s 46],
 - (c) proposed units within an FDU, and
 - (d) any component parts of the stratum estate [s 45(c)].
-

7. Complete unit plans

Introduction This section deals with the final stage (the complete unit plan) of a staged unit development.

Once a stratum estate has been created the stratum estate may be dealt with in accordance with ss 50 - 53.

Application lodged An application to deposit a complete unit plan is made under s 24(2)(c).

Application requirements The application for deposit of a complete unit plan is required to:

- (a) be made in the prescribed form (Form 1, Schedule 2 of the Regulations), and
- (b) be made by the registered proprietor of the FDUs being developed into principal and accessory units and common property [s 24(3)].

Plan requirements The complete unit plan will comply with s 25(3) if it

- (a) shows all the principal and accessory units and common property that have been erected or developed (completed), and

Note: A complete unit plan will be deposited in substitution for the previously deposited stage unit plan [s 25(4)]

- (b) has been approved as to survey [s 32(2)(c)].

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Complete unit plans, continued

Certificates to accompany complete unit plan or application to deposit plan

The following certificates are required to accompany the plan or application to deposit the plan:

- (a) a certificate under s 224(c) of the RMA,

Note: If the certificate under s 224(c) of the RMA has been provided with the PUD plan, it is not necessary to provide one for each stage development plan.

- (b) a certificate under s 32(2)(a) by the territorial authority with additional certification as required by s 25(5) in relation to the stage in the prescribed form [Form 28, Schedule 2 of the Regulations],

- (c) a certificate under s 32(2)(b) by a registered valuer showing the ownership interest [*and proposed ownership interest*] in the prescribed form (Form 5, Schedule 2 of the Regulations),

Note:

- A new certificate under s 32(2)(b) is required although one will have been given in respect of the PUD plan. The new certificate will show the ownership interest for the developed units.
- This certificate should be part of the plan deposit dealing as it is recorded against the SRS.

Note:

- Although s 32(1)(d) applies literally to each plan, if the consents are given in respect of the PUD plan, the Registrar will not require those consents to be repeated for each stage plan.
- Section 32(1)(a)-(c) will not apply here as the requirements will have been met at the PUD plan and first stage plan phase.

Documents that may accompany application to deposit plan

The application to deposit the complete unit plan must be accompanied by a notice in the prescribed form (Form 3, Schedule 2 of the Regulations) by the subdividing owner setting out the utility interest for any principal or accessory unit shown on the complete unit plan [s 39(1)].

Note: This document is only required if the utility interest differs from the ownership interest [s 39(2)].

continued on next page

Complete unit plans, continued

Registration actions on deposit of complete unit plans

On deposit of a complete unit plan, the Registrar will:

- (a) create a computer register in the name of the registered proprietor (not the body corporate) of the units shown on the complete unit plan [ss 43(1)(a) or 44(1)(a)],
- (b) if requested by the registered proprietor, issue a separate computer register for any principal units [s 43(2) or 44(2)],

Note: Computer registers for principal units may include one or more accessory units [s 43(3) or 44(3)].

- (c) cancel the existing computer registers for the FDU that is being converted into principal and accessory units on the complete unit plan [s 43(1)(b)].

Note: There should be no undeveloped FDUs remaining following the deposit of the complete unit plan.

Restrictions on issuing title

The Registrar will not create a computer register for:

- (a) the base land (the remaining FDU or FDUs converted into principal or accessory units in the complete stage [s 45(a)]
 - (b) the common property [s 46].
-

8. Substituted proposed unit development plans

Introduction

- (a) This section deals with alterations to the undeveloped portion of an uncompleted stage development (FDUs waiting to become units or common property).
- (b) Section 30(1) authorises alterations to a PUD plan other than transfers of and additions to common property [ss 57 or 59] and redevelopments [ss 65-71].
- (c) Under this process, the completed stages of a stage unit development remain unchanged. Those parts of the stage development that have yet to be developed may be altered and the existing PUD plan replaced with a substituted or new PUD plan (SPUD plan) showing the new configuration of proposed units and common property. Subsequent stage unit plans are then drawn up in accordance with those changes.
- (d) Redevelopments of the completed stages of an uncompleted stage development are dealt with separately in sections 9, 10, and 11 below.

Note: The SPUD plan does not have to be accompanied by a stage unit plan.

Application lodged

An application to deposit a SPUD plan is made under s 30(2) and (3) by the body corporate.

Application requirements

An application to deposit the SPUD plan may be made in Form 1, Schedule 2 of the Regulations.

Plan requirements

The SPUD plan will comply with s 30(6) if it:

- (a) shows all the proposed principal and accessory units and common property [s 30(6)(a)],
 - (b) shows any modification to the PUD plan being replaced [s 30(6)(b)], and
 - (c) has been approved as to survey [s 32(2)(c)].
-

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Substituted proposed unit development plans, continued

Certificates to accompany SPUD plan or application to deposit plan

The following certificates are required to accompany the plan or application to deposit:

- (a) subdivisional approval under s 223 of the RMA,
- (b) a certificate under s 224(c) of the RMA (unless the territorial authority elects to certify the stage and complete plans),
- (c) a certificate under s 224(f) of the RMA,
- (d) a certificate under s 32(2)(a), [s30(7)] by the territorial authority. If the stage plan accompanies the SPUD plan, the certificate should cover both s 32(2)(a) and s 25(5). The certificate will be in the prescribed form (Form 28, Schedule 2 of the Regulations).
- (e) a certificate by a registered valuer showing the ownership interest or proposed ownership interest [ss 32(2)(b) and 30(7)] for each of the units. The certificate will be in the prescribed form (Form 5, Schedule 2 of the Regulations).

Note: This certificate should be part of the plan deposit dealing as it is recorded against the SRS.

- (f) a certificate under s 216 by the body corporate in the prescribed form (Form 33, Schedule 2 of the Regulations), and

Note: This certificate should be part of the plan deposit dealing as it is recorded against the SRS.

- (g) additional certification under s 30(5)(b) by the body corporate if the land is stratum lease or licence.

Note: Section 31(2) applies to this plan rather than s 31(1) [see s 30(7)]. This means that the consent requirements in ss 32(1)(d) and (3)(a) do not apply to SPUD plans in the context of s 30 even though they did apply to the PUD plan being replaced. However, s 30(5) takes care of this as it and the Registrar is given a body corporate certificate [see s 30(7)] instead of consents

Registration actions on deposit of SPUD plan

- (a) The Registrar will note on the supplementary record sheet:
 - (i) the application to deposit the SPUD
 - (ii) the certificate of ownership interests
 - (iii) the s 216 certificate.
- (b) No substantive title action can take place until a further stage unit plan that gives effect to the proposed changes shown on the SPUD is lodged and deposited

Redevelopments

9. Overview

Contents

This section contains the following topics:

Topic	See page
Redevelopment by amendment to existing unit plan	38
Redevelopment requiring new unit plan	41

Introduction

- (a) This section deals with changes to existing unit title developments (stratum freehold or leasehold-licence).
- (b) Redevelopments can be made in relation to:
 - (i) standard unit title developments
 - (ii) subsidiary unit title developments
 - (iii) the completed stages of uncompleted stage developments (standard or subsidiary).
- (c) There are two types of redevelopment (see s 8 for definition of 'redevelopment'). These are:
 - (i) those requiring an amendment to a unit plan [ss 65-67], and
 - (ii) those requiring the deposit of a new unit plan [ss 68-71].
- (d) A redevelopment under the 2010 Act is very similar to one under the 1972 Act. The two most salient changes are:
 - (iii) The transfer into the common property of a unit or part of a unit [s 8(1)(c)]. Under the 1972 Act, this was not a redevelopment, but was a stand-alone process under s 19(2) and was restricted to whole units, not part units.
 - (iv) The creation of separate processes for redevelopments that simply adjust boundaries between units [ss 65-67] and all other redevelopments [ss 68-71].

Note: Both an amendment to a unit plan and a new unit plan have to be approved as to survey and deposited in accordance with ss 65 - 71 [ss 66(d) and 69(2)].

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Overview, continued

SPUD plans and redevelopments

- (a) Subpart 10 of Part 2 [ss 64 – 71] covers all redevelopments, including changes to the developed portions (deposited stage plans) of uncompleted stage unit developments (standard and subsidiary). In other words, changes to those principal and accessory units for which titles have issued and to common property associated with those units will be effected under those provisions and not pursuant to s 30.
- (b) Section 30 applies only to the undeveloped portions of partially completed stage developments, ie changes to the stratum estate within future development units.
- (c) This is not immediately apparent from the legislation and requires some careful analysis of relevant provisions.
- (d) Sections 5 and 64 provide the key. The definition of 'unit plan' in s 5 includes:
 - (i) a proposed unit development plan
 - (ii) a stage unit plan
 - (iii) a complete unit plan
 - (iv) a unit plan amended in accordance with the 2010 Act
 - (v) a plan that has been or is intended to be deposited in substitution for an existing plan.
- (e) Section 64 states that if a unit plan referred to in ss 65 – 71 included a stage unit plan, the reference to the unit plan includes both stage and proposed unit development plans. Furthermore, both plans, including amendments to them, must be prepared, approved, and deposited in accordance with ss 65- 71
- (f) The combined effect of these provisions is that, if a redevelopment occurs in respect of units and/or common property on an uncompleted stage unit development, any new 'unit plan' or 'amendment to a unit plan' that may be required will include a SPUD plan.

10. Redevelopment by amendment to existing unit plan

Criteria for redevelopments by amending an existing plan

A redevelopment under ss 65 - 67 is a boundary adjustment between one or more units that does not materially affect:

- (a) the use, enjoyment, or ownership interest of any other unit in the development, or
- (b) the common property.

Note:

- A redevelopment under ss 65 - 67 will neither increase nor reduce the number of units but will only adjust the boundaries between the affected units.
 - These are subdivisions for the purposes of the RMA [s 13].
-

Plan amendment requirements

Section 66 requires the amendment to the unit plan to:

- (a) define the boundaries of the enlarged or reduced units,
 - (b) show the enlarged or reduced units with numbers or letters not already used, and
 - (c) specify which of the enlarged or reduced units are principal or accessory units.
-

Special requirements for stage unit developments

If the redevelopment affects units on the developed portion of an uncompleted stage unit development, a SPUD plan replacing the existing PUD plan is required.

Note:

- The SPUD plan reflects the requirements set out in s 66 in relation to the amendment to the unit plan.
 - Because the amendment to the unit plan will be the plan of subdivision, the SPUD plan does not require the certificates set out in [Certificates required for application and amendment to a unit plan](#) below.
-

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Redevelopment by amendment to existing unit plan, continued

Application lodged for redevelopment by amendment of an existing plan

- (a) The application for the deposit of an amendment to an existing unit plan is required to be jointly made by the owners having their boundary or boundaries adjusted [s 65(2)].
 - (b) The application must be made in the prescribed form (Form 2, Schedule 3 of the Regulations) [s 67(1)].
-

Certificates required for application and amendment to a unit plan

The amendment to the unit plan and the application to deposit must be accompanied by the following:

- (a) subdivisional approval under s 223 of the RMA,
- (b) a certificate under s 224(c) of the RMA,
- (c) a certificate under s 224(f) of the RMA,
- (d) a certificate under s 32(2)(a) by the territorial authority (Form 29, Schedule 2 of the Regulations),

Note: If a SPUD plan accompanies the amendment plan, the additional certification required by s 25(5) will **not** be required as the latter plan is neither a stage nor a complete unit plan. Nevertheless, the Registrar will need to ensure that the amendment plan and the SPUD plan are consistent.

- (e) a certificate under s 65(1) from the body corporate certifying that the redevelopment is of the type for which an amendment can be used [s 65(4)] (Form 31, Schedule 2 of the Regulations),

Note: The certificate may be relied on by the Registrar as evidence of the matters certified [s 67(2)].

- (f) a certificate under s 67(1)(b) by a registered valuer as to ownership interest (Form 6, Schedule 2 of the Regulations).
-

Documents that may accompany application to amend unit plan

A document by the body corporate as to the utility interest of the units, for which boundaries are being adjusted, may accompany the application to deposit the amendment to the unit plan [s 41]. This can only happen if that utility interest is different from the ownership interest as a result of a reassessment carried out under s 41. (Form 4, Schedule 2 of the Regulations, modified to suit circumstances)

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Redevelopment by amendment to existing unit plan, continued

Registration actions for application to amend a unit plan

On deposit of the plan amendment and registration of any boundary adjustment transfers or other instruments, such as discharges of mortgage, the Registrar will:

- (a) cancel the existing computer registers for the affected units [s 67(3)(a)],
 - (b) create separate computer registers for the reconfigured units in accordance with the plan amendment[s 67(3)(b)], and
 - (c) enter a reference to the plan amendment on the supplementary record sheet [s 67(3)(c)].
-

11. Redevelopment requiring new unit plan

Criteria for redevelopments requiring a new unit plan

Other than redevelopments that can be effected by an amendment to an existing plan, as above (see [Criteria for redevelopments by amending an existing plan](#) above), all other redevelopments will require a new plan in substitution for the existing unit plan [s 68 - 71]. (See s 8 for definition of redevelopment)

Note: These are subdivisions for the purposes of the RMA [s 13].

New plan requirements

The new plan is required to:

- (a) specify all the units and common property making up the unit title development [s 69(1)],
 - (b) define the boundaries of any new, enlarged, or reduced unit [s 69(1)(a)],
 - (c) show all new, enlarged, or reduced units with identifiers that have not been already used on the existing unit plan [s 69(1)(b)], and
 - (d) specify which of the new, enlarged, or reduced units are principal units and accessory units [s 69(1)(c)].
-

Applications lodged for redevelopment requiring a new unit plan

- (a) The body corporate makes application to deposit the new unit plan [s 68(2)].
 - (b) The application to deposit the new unit plan must be in the prescribed form (Form 1, Schedule 2 of the Regulations) [s69(3)].
-

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Redevelopment requiring new unit plan, continued

Certificates and notices to accompany new unit plan or application to deposit

The following certificates and notices are required to accompany the plan or application to deposit:

- (a) subdivisional approval under s 223 of the RMA,
- (b) a certificate under s 224(c) of the RMA,
- (c) a certificate under s 224(f) of the RMA,
- (d) a certificate under s 32(2)(a) by the territorial authority in the prescribed form (Form 28, Schedule 2 of the Regulations) [s69(2)],

Note: If a SPUD plan accompanies the amendment plan, the additional certification required by s 25(5) is **not** be required as the latter plan is neither a stage nor a complete unit plan. Nevertheless, the Registrar needs to ensure that the amendment plan and the SPUD plan are consistent.

- (e) a certificate under s 69(3) by a registered valuer showing the ownership interest and/or reassessed ownership interest in the prescribed form (Form 7, Schedule 2 of the Regulations),

Note: If s 69(3)(a) applies, the ownership interest of the affected units is reapportioned, but if s 69(3)(b) applies, **all** units have their ownership interest reassessed.

- (f) a certificate under s 216 by the body corporate (Form 33, Schedule 2 of the Regulations) with additional certification as required by s 69(6) as to the giving of consents in terms of s 68(3)(a) and (b) [ss 68(5) and 69(6)],

Note:

- The certificate can be relied on by the Registrar as sufficient evidence of compliance [s 216(2)].
- The expression 'materially affected' is used in s 68(3)(a) and is not defined but is presumed to mean 'directly affected', ie a unit that is caught by s 8(1)(a) to (c).

- (g) a notice of reassessment of the utility interest for any unit by the body corporate, if immediately before the redevelopment it was different to the ownership interest because it had been reassessed under s 41 (Form 4, Schedule 2 of the Regulations with necessary modifications) [s 70].

Note: There is a difficulty with the legislation in that if the utility interest was different because the developer had fixed it prior to the plan deposit (under s 39(2)), then technically it cannot be reassessed under s 70. That would have to wait until the 36 months' stand-down had passed which it may or may not have at the time of the redevelopment.

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Redevelopment requiring new unit plan, continued

Registration actions for application to deposit new plan

On deposit of the new plan and registration of any relevant instruments the Registrar will:

- (a) cancel the existing computer registers for the affected existing units [s 71(a)], and
 - (b) create computer registers in accordance with the new plan for the units affected by the redevelopment [s 71(b)].
-

Dealings with common property

12. Dealings with common property

Introduction

Sections 54-59 deal with common property, which is defined in s 5.

See [Common property page 87](#).

Ownership of common property

- (a) Common property is owned by the body corporate. This is a significant change to the 1972 Act where the common property was owned by the unit owners in shares proportionate to their unit entitlement [s 54(1)].
 - (b) Owners of all the units in a development are beneficially entitled to the common property in shares proportional to the ownership interest (or proposed ownership interest in the case of FDUs) in respect of their respective units [s 54(2)].
-

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Dealings with common property, continued

Transactions that can be registered in respect of common property

- (a) The body corporate may:
 - (i) grant a lease or licence over common property [s 56(1)],
 - (ii) sell part of the common property [s 56(3)].

Note: Subsidiary bodies corporate are prohibited from selling common property.
- (b) The body corporate may:
 - (i) grant or acquire an easement over [s 62(1)(a)], or in favour of [s 62(2)(a)], common property,
 - (ii) enter into a covenant over [s 62(1)(b)], or for the benefit of [s 62(2)(b)], common property,
 - (iii) enter into a variation or surrender of an easement or a covenant over [s 62(3)(b)], or in favour of [s 62(3)(a)], common property.
- (c) The body corporate may:
 - (i) vary, surrender, or assign any easement, and
 - (ii) vary or revoke any covenant that affected the base land prior to the deposit of the unit plan [s 61(1)].

Note: The body corporate is treated as the registered proprietor of the land affected by such an easement or covenant for the execution of any instrument for the purposes of s 61(1) [s 61(2)].
- (d) Bodies corporate have the right to borrow [s 130(1)] but may not register a mortgage over common property [s 130(2)].

Compliance in respect of common property

- All of the transactions in paragraphs (a), (b), and (c) above require body corporate certification under s 216 [s 56(4) (Form 33, Schedule 2 of the Regulations) and s 62(5)] and, in respect of common property in a subsidiary unit development:
- (a) leases and licences need the additional certification required by s 56(5), and
 - (b) easements and covenants need the additional certification required by s 62(6).

continued on next page

Dealings with common property, continued

Common property to be transferred out of a unit title development

- (a) A body corporate may transfer the whole or part of the common property to become land outside the unit title development and cease to be stratum estate [s 57(1)].
- (b) The following will be required:
 - (i) a plan of subdivision showing both the residue parcel on which the unit title development sits, and the new parcel to be transferred out of the unit development [s 57(1) and (2)], and
 - (ii) a new unit plan in substitution for the existing unit plan [s 57]
- (c) A transfer of common property can occur for an uncompleted stage unit title development and, if so, the plan in (b)(i) above will be two plans, that is a SPUD plan and a stage unit plan [s 57(3)(a)].
- (d) The new unit plan is required to show the effect of the transfer to the Registrar's satisfaction [s 57(4)]. Thus, the new unit plan will show the remaining common property minus the part that is to be transferred.

Registration actions for common property to be transferred out of a unit title development

On deposit of a new unit plan, the Registrar will:

- (a) note the transfer and its effect on the supplementary record sheet [s57(5)(a)], and
- (b) create a computer register in the name of the transferee for the land transferred [s 57(5)(b)].

Note:

- The land transferred will remain subject to any registered or recorded interests (eg easements, land covenants) affecting that former common property, unless those interests are surrendered or otherwise brought to an end prior to the transfer.
- The computer register is issued free from any incidental rights under s 73 [s 57(5)(b)].
- For body corporate certification requirements, see [Compliance in respect of common property](#) above [s 56(4) and (5)].

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Dealings with common property, continued

Land to be transferred to unit title development and added as common property

- (a) Land outside the unit title development may be transferred to the body corporate as common property, but not to a subsidiary body corporate [s 58(1)]. The land is included in the common property once it has been transferred [s 59(4)].
- (b) There must be
 - (i) a special resolution by the body corporate resolving to acquire the interest in land [s 58(1)(a)], and
 - (ii) the land being transferred must be transferred free from any registered mortgage, encumbrance, charge, lease, or sublease [s 58(1)(b)].
- (c) The estate being transferred from outside the unit development must be compatible with the stratum estate for the unit development it is joining. This means:
 - (i) if the existing stratum estate is a stratum estate in freehold, the transfer must be of an estate in fee simple [s 58(1)(c)(i)], or
 - (ii) if the existing stratum estate is a stratum estate in leasehold or licence, the transfer must be of an estate as lessee or licensee under a lease or licence from the grantor of the lease or licence of the base land [s 58(1)(c)(ii)].

Note: The lease or licence must be for the same remaining period and on the same terms and conditions as the current lease or licence of the base land [s 58(2)].

Plan requirements

- (a) There must be a new unit plan in substitution for the existing plan showing the land to be transferred as common property [s 59(1)].
- (b) If the transfer relates to the addition of common property to an uncompleted stage unit development, the new unit plan will consist of:
 - (i) a SPUD plan, and
 - (ii) a stage unit plan [s 59(2)(a)],both of which must be approved as to survey [s 59(2)(b)].
- (c) The new unit plan must show the effect of the transfer, ie the lot being transferred must be shown as being incorporated with the common property [s 59(3)].

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Dealings with common property, continued

Registration actions for land to be transferred to a unit title development as common property

On deposit of a new plan, the Registrar will note the effect of the transfer on both:

- (a) the computer register of the land being transferred [s 59(5)(a), and
- (b) the supplementary record sheet [s 59(5)(b)].

Note:

- Registration of the transfer has the effect of including the transferred land as part of the common property [s 59(4)] and includes extending the beneficial ownership of that common property to the registered proprietors of all units [ss 54(2) and 59(6)].
- The transfer must be accompanied by a body corporate certificate under s 216 [s 58(3)] (Form 33, Schedule 2 of the Regulations).

Access lots

Land outside the unit title development that is an access lot (see definition in s 5) can be added under s 58 as an addition to the common property by the transfer and plan process outlined above [s 55] (See [Access lots, page 88](#)).

Note: This permits a share in land outside existing unit developments to be added to the development as common property at a later stage.

Easements and covenants

13. Easements and covenants

Introduction

This section covers easements and covenants, including their variation or extinguishment, as follows:

- (a) existing easements and covenants affecting the base land [ss 60-61],
- (b) new easements and covenants affecting common property [s 62], and
- (c) new easements and covenants affecting units [s 63].

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Easements and covenants, continued

Easements and covenants existing prior to a unit development

- (a) Existing easements and covenants over or in favour of the base land (fee simple/lease/licence) remain unaffected by the deposit of a unit plan [s 60(1)].
- (b) These easements and covenants are to be recorded on the supplementary record sheet [s 60(2)].

Note: For the purposes of recording under s 60(2), if there is a layered development on the base land, the supplementary record sheets for recording purposes are those for:

- the head unit title development and
- any subsidiary unit title development affected by the easements and covenants.

[see s 60(3)]

- (c) If there is a layered development on the base land, the supplementary record sheet or sheets for recording purposes are those for the head unit title development and any subsidiary unit title development affected by the easement or covenant [s 60(3)].

Note: In this context 'affected by' means 'spatially affected by'. The burden of only those easements and covenants that spatially intersect the subsidiary development will be noted on the supplementary record sheet for that development.

Easements and covenants appurtenant to the base will also affect a subsidiary development. These too will be noted on the supplementary record sheet.

- (d) Easements and covenants affecting the base land cannot be recorded on any computer register for a unit [s 60(2)].
- (e) The body corporate of the following may vary, surrender, or transfer any easement or vary or revoke any covenant to which s 60 applies [s61(1)]:
 - (i) a standard unit title development (see definition in s 5), or
 - (ii) a head unit title development (see s 5 definition).

Note: The body corporate is to be treated as the registered proprietor of the land for the purposes of ss 90 to 90F of the LTA in relation to any instrument described in s 61(1) [s 61(2)]. This means the body corporate will be the grantor or grantee for execution purposes.

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Easements and covenants, continued

New easements and covenants affecting the common property

- (a) The body corporate, after special resolution to do so, may:
 - (i) grant easements in gross or for the benefit of any unit or other land over common property [s 62(1)(a)],
 - (ii) acquire easements in favour of common property [s 62(2)(a)],
 - (iii) enter into covenants over common property for the benefit of units or other land [s 62(1)(b)],
 - (iv) enter into covenants for the benefit of common property [s 62(2)(b)], and
 - (v) enter into variations or surrenders of easements or covenants over or in favour of common property [s 62(3)].
- (b) The body corporate is required to provide certification under s 216 with the instruments lodged to create or deal with any easements or covenants under s 62(1)-(3) [s 62(5)] (Form 33, Schedule 2 of the Regulations).
- (c) If the body corporate is a subsidiary body corporate, it is also required to add to that certification that consents required under s 62(4) have been given [s 62(6)].
- (d) In relation to dealings under s 62(1)-(3), a subsidiary body corporate must obtain consent from the body corporate for:
 - (i) its parent unit title development,
 - (ii) any unit title development located between the subsidiary and its head unit title development, and
 - (iii) its head unit title development [s 62(4)].

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Easements and covenants, continued

New easements and covenants affecting units

- (a) The owner of a unit may:
 - (i) grant easements over the unit for the benefit of other land [s 63(2)(a)],
 - (ii) acquire easements over other land in favour of the unit [s 63(1)(a)],
 - (iii) enter into covenants over the unit for the benefit of other land [s 63(2)(b)],
 - (iv) acquire the benefit of covenants over other land in favour of the unit [s 63(1)(b)], and
 - (v) enter into variations or surrenders of easements or covenants over or in favour of the unit [s 63(3)].
- (b) Any instrument lodged to give effect to s 63(1)-(3) must be accompanied by a body corporate certificate under s 63(6) in the prescribed form (Form 30, Schedule 2 of the Regulations) covering off the consents required to be given under s 63(4).

Note: The Registrar may rely on such a certificate as sufficient evidence of compliance with s 63 [s 63(7)].
- (c) In relation to a subsidiary body corporate, before giving consent under s 63(4), it must first obtain consent from the body corporate for:
 - (i) its parent unit title development,
 - (ii) any unit title development located between the subsidiary and its head unit title development, and
 - (iii) its head unit title development [s 63(5)].

Plan requirements

- (a) Existing easements, both subject and appurtenant, are to be recorded in a schedule to be included with the unit plan [rule 10.2.2 of the Rules for Cadastral Survey 2010].
 - (b) Existing subject easements are to be depicted spatially on the unit plan [rule 10.4.3 of the Rules for Cadastral Survey 2010].
 - (c) New easements are to be recorded in a schedule or, in the case of new easements required by a territorial authority, recorded in a memorandum [rule 10.2.1 of the Rules for Cadastral Survey 2010].
 - (d) New easements are to be depicted spatially on the unit plan [rule 10.4.3 of the Rules for Cadastral Survey 2010].
-

Special provisions for leases

14. Overview

Introduction This section deals with special provisions that apply only to unit title developments created as a stratum leasehold or licence estate.

Contents This section contains the following topics:

Topic	See page
Special provisions relating to leasehold or licence	54
Merger of stratum leasehold	57

15. Special provisions relating to leasehold or licence

Background

- (a) Part 3 [ss 158 to 170] applies specifically to stratum leasehold. The provisions in the 2010 Act apply generally to stratum leaseholds unless stated otherwise.
- (b) Section 16(3) expressly prohibits the creation of a sub-leasehold stratum estate so only a stratum leasehold is permissible. This is a codification of the existing case law.
- (c) The lessor's consent is not required for any dealing with a stratum estate in leasehold except for:
 - (i) an alteration to a proposed unit development as provided for in s 30(5)(b) (substituted SPUD plan), and
 - (ii) a redevelopment requiring a new plan affecting a stratum estate in leasehold or licence as provided for in s 68(3) [s 161].
- (d) The body corporate is not entitled to have a computer register created for the leasehold estate even though it assumes many of the entitlements and responsibilities of the lessee [s 160(2)].
- (e) The lessor's reversionary estate in the leasehold (fee simple) remains unaffected by the deposit of the unit plan and the creation of the stratum leasehold. That reversionary estate may still be dealt with (for example, transferred or mortgaged) in all respects as though the unit plan had not been deposited [s 159].
- (f) Despite the express term of the lease, the lease is deemed not to have expired until the unit plan has been cancelled or a certificate of expiry has been registered in accordance with s 166(3) [see s 166(1)]. However, the lessor may preserve the lease by agreeing to its continuance [s 166(2)].
- (g) Section 164(1) prevents the exercise of the lessor's right of forfeiture or re-entry while the unit plan remains uncanceled.

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Special provisions relating to leasehold or licence, continued

Application for cancellation of unit plan and stratum leasehold

- (a) In addition to cancellation by the body corporate (see [Cancellation without court intervention, page 69](#)), a lessor may apply to the High Court for cancellation of a unit plan in accordance with s 165.
 - (b) The Court may make a declaration/order authorising such cancellation [s 165(3)].
-

High Court order authorising cancellation

- (a) The usual cancellation provisions under ss 187-189 apply [ss 165(2)(b) and (3)].
 - (b) Lodgement of the declaration/order with the Registrar must be made within six months of the date of the High Court declaration/order authorising the cancellation of the plan [s 165(3)(a)].
-

Cancellation by certificate of expiry

- (a) While the term of the lease is deemed not to expire while a unit title development is in existence (see [Background](#) above), the lease can be ended, and the unit plan cancelled, by the lodgement of a certificate of expiry under s 166(3).
 - (b) The following parties may lodge a certificate of expiry in the prescribed form (Form 32, Schedule 2 of the Regulations) with the Registrar:
 - (iii) the lessor, or
 - (iv) persons who together are entitled to exercise 25% of the votes on an ordinary resolution of the body corporate [s 166(3)].
-

continued on next page

Special provisions relating to leasehold or licence, continued

Registration actions for a certificate of expiry

- (a) The Registrar, if satisfied that the term of the lease, including all renewals and extensions, has expired and that no application for relief by the body corporate has been made under s 264 of the Property Law Act 1952 [s 166(5) to (7)], will:
 - (i) cancel the unit plan [s 166(5)(a)],
 - (ii) cancel the computer register for each of the units [s 166(5)(b)],
 - (iii) record on the supplementary record sheet that the lease has expired [s 166(5)(c)],
 - (iv) cancel the supplementary record sheet, and
 - (v) record on the computer register for the lessor's estate that the lease has expired.
- (b) If the body corporate has applied for relief under s 264 of the Property Law Act 2007 and a copy of the application has been served on the Registrar [s 166(6)], the certificate of expiry cannot be registered unless:
 - (i) the High Court orders the registration of the certificate [s 166(7)(a)], or
 - (ii) if the application has been refused or withdrawn, the owners, who together are entitled to 25% of the votes on an ordinary resolution of the body corporate, notify the Registrar of that and request the Registrar to register the certificate [s166(7)(b)].

Note: If the certificate of expiry has not been lodged with the Registrar, it should be in terms of s 166(3). Section 166(7) would apply in cases where the certificate has been lodged, but could not be actioned because notice of an application for relief has been received by the Registrar.

16. Merger of stratum leasehold with fee simple

Background

- (a) A leasehold estate may be merged with the fee simple estate [s 169]. Such a merger has the effect of converting the stratum estate from leasehold to freehold [s 169(5)].
- (b) A merger can occur when:
 - (i) the lessor acquires the stratum estate in leasehold in all the units shown on the unit plan [s 169(1) (a)], or
 - (ii) all owners of all the units shown on the unit plan acquire the reversionary estate (the fee simple) in the whole of the base land [s 169(1)(b)].
- (c) In non-unit title situations, common law dictates that there must be no impediment to merger. Interests, such as mortgages, affecting the lesser estate or interest, must first be cleared from that estate or interest as a pre-requisite to merger. Interests affecting the greater estate survive the merger.
- (d) Section 169 is silent as to what happens to interests affecting either the fee simple or the stratum leasehold estates. There is no mechanism for preserving or otherwise dealing with those interests. Both the fee simple and stratum leasehold estates must be cleared of any registered or recorded estates or interests.⁴
- (e) Interests that only affect the common property will survive the merger and remain on the supplementary record sheet.

Lodgement requirements for merger

- (a) Where the lessor acquires a stratum estate in leasehold (see (b)(i) in [Background](#) above), merger is not automatic [s 169(1)(a)]. The lessor must deposit a declaration that it is intended that merger should occur [s 169(2)].
- (b) Where the unit owners acquire the fee simple (see (b)(ii) in [Background](#) above) [s 169(1)(b)], merger does not occur unless:
 - (i) the owners acquire the fee simple estate in shares proportional to their ownership interest in the units, and
 - (ii) those owners deposit with the Registrar a declaration that it is their intention to merge [s 169(3)].

continued on next page

⁴ Section 118A of the Land Transfer Act 1952 is limited to the situation described in that provision so will not be available for a merger under s 169 of this Act.

Merger of stratum leasehold with fee simple, continued

Registration actions

On the lodgement of a transfer and declaration (see (b)(i) and (ii) in [Lodgement requirements for merger](#) above), the Registrar will:

- (a) memorialise the merger on the supplementary record sheet [s 169(5)(a)],
 - (b) note the merger on the stratum leasehold computer unit registers for each of the units[s 169(5)(c)],
 - (c) cancel the existing stratum leasehold computer unit registers for each of the units [s 169(5)(b)], and
 - (d) issue new stratum freehold computer unit registers to the entitled persons in accordance with s 169(4)(a) or (b) [s 169(5)(b)].
-

Conversion of existing schemes

17. Conversion of existing company or cross lease schemes to unit title developments

Background

- (a) The owners of flat and office-owning companies (Part 7A of the LTA) or cross lease developments may convert their existing scheme to a unit title development (see subpart 3 of Part 4 and s 191(1)(a) in particular).
 - (b) The outcome of a successful conversion would be the substitution of the company or cross lease title arrangements with a unit title development [ss 199-200].
 - (c) By virtue of s 13(2), s 11 and Part 10 of the RMA do not apply to subpart 3 of Part 4. In other words, no approval or certificates under ss 223, 224(c) or (f) are required.
-

Notice of intention to subdivide to precede application

- (a) The application to deposit the unit plan must be preceded by either:
 - (i) a resolution by 75 % of the company members or cross lease owners, or
 - (ii) an order of the High Court under s 193 [s 192].
 - (b) In either case, prior notice of the intention to subdivide into units must have been given to all the parties specified in s 195 including the Registrar [s 195(1)(c)]. Notice may be in Form 24, Schedule 2 of the Regulations.
 - (c) The notice will be that the resolution has been passed or the Court order has been made authorising the subdivision (conversion into unit titles) [s 195(1)].
-

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Conversion of existing company or cross lease schemes to unit title developments, continued

Registration guidance for notice of resolution or Court order

The Registrar will ensure that the notice of the resolution or order satisfies the requirements of s 195(2) and (3) in that:

- (a) it is accompanied by a sealed order (where one has been made) [s 195(2)(a)],
- (b) it contains a list of all persons on whom notice has been served and evidence as to the proper service of those notices [s 195(2)(b)],

Notes for (b):

- See s 195(1)(a) which requires all persons who have a registered interest in the land being subdivided or who are shown on the register as having an interest in that land to be notified [s 195(2)(b)].
 - If the Registrar is not satisfied with the evidence of service provided in the notice, he may require a declaration as to service accompanied by copies of receipt of notice.
- (c) it contains a description of the land sufficient for it to be identified in LINZ records [s 195(2)(c)],
 - (d) it states that either
 - (i) it is the intention of at least 75% of the members of the company or the owners to subdivide the land and that all steps necessary will be made to give effect to that unless, not later than one month after the date on which the notice is given to the Registrar, a caveat in the prescribed form (Form 25, Schedule 2 of the Regulations) is lodged with the Registrar [s 195(3)], or
 - (ii) that an order by the High Court under s 193 has been made and that all steps necessary will be made to give effect to that unless, not later than one month after the date on which the notice is given to the Registrar, a caveat in the prescribed form is lodged with the Registrar [s 195(3)].

(see following page for additional notes)

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Conversion of existing company or cross lease schemes to unit title developments, *continued*

Registration guidance for notice of resolution or Court order *continued*

Notes:

- The legislation requires the notice under s 195(1) to specify an end date for the lodging of caveats. However, at the time the notice is prepared, the date of lodgement of the notification with the Registrar may not be known because it may be simultaneous with or later than the date it is served on those parties set out in s 195(1)(a).
 - Consequently, the notice will precisely follow the wording in s 195(3) and will invite the recipient of the notice to search the relevant register to ascertain the date the notice of intention is entered on the register. The one month period will run from the day after that date.
-

Registration requirement for notice of resolution or Court order

The Registrar is required to enter on each computer register for the land concerned that the company or owners have advertised (notified) an intention to subdivide under this Act [s 195(4)].

Registration requirements for receipt of caveat

- (a) Any caveats must be lodged under s 195(3) in the prescribed form (Form 24, Schedule 2 of the Regulations).
 - (b) The Registrar will enter the caveat, if it is in order, against the computer registers for the land affected. In the case of a company that will be the fee simple title and, in the case of a cross lease arrangement, it will be noted against all composite computer registers.
-

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Conversion of existing company or cross lease schemes to unit title developments, continued

Registration actions after receipt of caveat

- (a) The company or owners may serve notice on the caveator requiring him, within three months of the service of that notice, to either:
 - (i) consent to the plan, or
 - (ii) apply to the High Court for an order that the caveat not be removed [s 196(1)].
- (b) While that caveat remains against the computer register, no application to deposit the unit plan can be received or given effect to by the Registrar.
- (c) If the caveator fails to either consent or apply to the High Court by the close of the three months' period, the caveator is treated as having consented to the unit plan [s 196(2)]. Such deemed consent enables the caveat to be removed under s 197(2) so that if there are no other impediments (such as another caveat), the company or cross lease owners may then proceed with an application to deposit the unit plan.
- (d) In order to be satisfied that notice was served on the caveator under s 196(1), and that the caveator did not apply to the High Court within the prescribed time [s 196(2)], the Registrar will need to be supplied with evidence before:
 - (i) the caveator can be treated as having consented to the plan [s 196(2)], and
 - (ii) the caveat can be removed [s 197(2)].

The company or owner can provide this evidence by means of a statutory declaration.
- (e) If such consent is given and the caveat is still in force, that consent is to be treated as removing the caveat and the Registrar must note the removal of the caveat accordingly [s 197(2)]. The company or cross lease owners may then proceed with an application to deposit the unit plan.

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Conversion of existing company or cross lease schemes to unit title developments, continued

Application to High Court by caveator

- (a) On receipt of an application by the caveator under s 196(3), the High Court may direct:
- (i) that the caveat not be removed [s 196(3)(a)], or
 - (ii) that the caveat be removed (with or without compliance with conditions) [s 196(3)(b)].

Note:

- The Court may vary any such order as long as the caveat has not already been removed [s 196(4)].
- There is no specific requirement for the order to be lodged with the Registrar. However, as the order will have an impact on the fate of the caveat one way or another it is important that the order be lodged with the Registrar.
- In the absence of a direction to register the order, this can be processed in the same manner as a Court order received in relation to a caveat lapsing under ss 145 and 145A of the LTA.

- (b) If the Court directs the caveat not be removed, no application to deposit the unit plan can be received by the Registrar.
- (c) If the Court directs the caveat be removed, the Registrar may act on that direction and note the removal on the computer register accordingly.

Note: If required, evidence of compliance with any conditions imposed by the Court in its order can be requested; for example, a statutory declaration.

- (d) Once the caveat has been removed, and provided there are no other impediments (for example, another caveat lodged under s 195), the Registrar may receive and action an application to deposit the unit plan.
-

Application to deposit unit plan of conversion required

- (a) An application to deposit the unit plan of conversion is required [ss 191(1) and 192(1)].
- (b) The application should be in the prescribed form (Form 1, Schedule 2 of the Regulations).
-

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Conversion of existing company or cross lease schemes to unit title developments, continued

- Plan requirements** The boundaries of the principal units must be exactly the same as the boundaries for the buildings or part buildings of:
- (a) the occupation licences under Part 7A of the LTA [s 191(1)(b)(i)], or
 - (b) the cross leases [s 191(1)(b)(ii)].
-

Consent requirements for plan deposit

The following are required for the deposit of the unit plan:

- (a) consent by the company or the members of the company or the cross lease owners (or their agent) and persons with mortgages or charges over the intended units [s 197(3)], and
- (b) consent by those with registered estates or interests in the land other than company members or cross lease owners [s 197(1)].

Note: Such consent may be waived in certain circumstances (see [Waiver of consent requirements](#) below)

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Conversion of existing company or cross lease schemes to unit title developments, continued

Waiver of consent requirements

(a) The Registrar may waive consent requirements (see (a) in [Consent requirements for plan deposits](#)) if satisfied that:

(i) it would be unreasonable to insist on the consent [s 197(3)(a)],

Note: If the resolution under s 192 is made with a 75% or greater vote and is not supported by a Court order under s 196, the minority of owners or members who did not vote in favour of the intention to subdivide and convert are not required to be given notice under s 195.

Those minority owners and members may have reason to withhold consent to the plan as this is their first formal opportunity to object outside the resolution process. This needs to be taken into account when the Registrar is called upon to decide whether to waive such consent under s 197(3)(a). This may have to be resolved under s 197(4); see (c) below.

(ii) the plan correctly defines the unit of the member or cross lease owner [s 197(3)(b)].

Note: Compliance with s 191(1)(b) should satisfy this requirement together with the new unit computer registers being issued to the former licensees or cross lease owners.

(b) Those with registered estates or interests referred to in (b) in [Consent requirements for plan deposit](#) above, must also consent to the deposit of the plan, unless the Registrar is satisfied that proper notice has been given under s 195(1)(a), and no caveat has been lodged [s 197(1)].

Note: The Registrar can confirm this by comparing the list of notice recipients in the notice of intention to convert with the registered or recorded interest holders on the occupation licence or cross lease registers.

(c) If anyone whose consent is required:

(i) is dead, or

(ii) cannot be found, or

(iii) refuses to consent, or

(iv) does not consent within a reasonable time, or

(v) for any other reason it is impracticable to obtain that consent,

an application can be made to the Court for it to give consent on their behalf [s 197(4)].

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Conversion of existing company or cross lease schemes to unit title developments, continued

Mortgaged land

- (a) The deposit of a unit plan is prohibited while there is any land subject to a mortgage or charge unless that mortgage or charge relates only to the proposed unit for which the Registrar has been asked to issue a separate computer register [s 198(1)].

Note: Part 7A of the LTA states:

- if the fee simple is mortgaged or charged then that mortgage or charge must be first discharged
- if the part of the building represented by the licence coincides exactly with the proposed unit that the licence-holder applied for, then the mortgage or charge does not have to be discharged and can be carried forward.

- (b) In a cross lease arrangement, the mortgage or charge may remain over the part of the fee simple relating to the building, as well as over the lease, but must be discharged as to the part of the fee simple not relating to the building.

- (c) Once the unit plan is deposited and computer register created, the stratum estate for that unit becomes subject to the mortgage or charge and the computer register is noted accordingly [s 198(2)].
-

Effect of deposit of a unit plan

- (a) When the unit plan is deposited a stratum freehold estate in each unit vests in the person who immediately beforehand:

- (i) held the licence to occupy over the flat or office, or
- (ii) was the owner of the cross lease.

That estate may devolve or be transferred, leased, mortgaged and dealt with as provided in the 2010 Act [s 199(1)].

- (b) If a flat or office-owning company registered under the Companies Act 1993, was the prior owner of the land, it is now deemed to have been removed from the company register and the Companies Act 1993 ceases to apply [s 199(2)].

Note: Other consequences to the termination of that company are specified in s 199(3).

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Conversion of existing company or cross lease schemes to unit title developments, continued

Registration actions on deposit

- (a) The Registrar will cancel the computer register to the base land [s 200(1)] and create a computer register in the stratum estate for each principal unit to each entitled owner [s 200(2)].
- (b) If there was a registered cross lease or occupation licence over what is now a unit, then s 117(2)-(4) of the LTA applies to that lease or licence as though it was in substitution [s 200(3)].

Note: This enables interests to be brought forward onto the computer registers for the units although s 198(2) takes care of mortgages and charges independently.

- (c) A settlement under the Joint Family Homes Act 1964 against a former cross lease or occupation licence may be brought across to the unit and the computer register created for that unit [s 200(4)].
-

Cancellation of unit plans

18. Overview

Introduction

This section deals with applications to cancel unit plans. Cancellation can be of both a subsidiary unit title development (leaving the underlying unit title development intact) or fully cancelling the unit title development (leaving underlying land intact).

- (a) A unit plan cannot be cancelled if a principal unit in the unit development contains a subsidiary unit title development. If a unit development is to be cancelled each dependent subsidiary unit development has to be cancelled first [s 178].
- (b) There are two methods of cancellation:
 - (i) applications by the body corporate [ss 177 to 186], and
 - (ii) applications authorised by the High Court [s 187 to 190].

Application to the High Court may be made by the body corporate, the administrator, or unit owners under s 189, and by the lessor under s 165(2)(b).

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This section contains the following topics:

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Cancellation with court intervention	73

19. Cancellation without court intervention

Application by body corporate for cancellation of unit plan

- (a) A body corporate may apply for cancellation of the unit plan in accordance with s 177.
 - (b) The application must be in the prescribed form (Form 20, Schedule 2 of the Regulations).
-

Certificates to accompany application for cancellation of unit plan by body corporate

The following are required:

- (a) a certificate under s 216 including the additional matters set out in s 177(6) (Form 33, Schedule 2 of the Regulations), and
 - (b) a certificate from a registered valuer reassessing ownership interest and any proposed ownership interest (if any) of all of the units in the unit title development in accordance with s 177(7) (Form 8, Schedule 2 of the Regulations).
-

Registration actions for cancellation of a unit plan by body corporate

On cancellation of the unit plan, the Registrar will:

- (a) record the cancellation on the computer registers for the units,
 - (a) note that every registered interest in or caveat or notice of claim over any unit or the common property has been extinguished [ss 183(2) and (4)]⁵,
 - (b) cancel all computer registers for the units,
 - (c) create computer registers for the underlying land or the principal unit (whichever the case may be) and show the ownership in the relevant shares in accordance with s 184,
 - (d) give notice to the relevant territorial authority that;
 - (i) the plan has been cancelled, and
 - (ii) the body corporate has been dissolved [s 186].
- Note:** There is no prescribed form for such notice.
- (e) note the cancellation on the supplementary record sheet and cancel the supplementary record sheet [s 179], and
 - (f) note the cancellation on the supplementary record sheet for the parent unit title development if a subsidiary unit title development has been cancelled [s 186(2) and (3)].
-

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⁵ Note that s 183(2) does not apply to those easements and covenants that continue after cancellation of the plan [s 180(2)(b) and (c) and s 181(2)(b)].

Cancellation without court intervention, continued

Effect of cancellation of standard unit title or head unit title development plans

The effect of cancellation of a standard unit title development or head unit title development plan is to:

- (a) cancel every easement or covenant over or appurtenant to any unit [s 180(2)(d)],
- (b) preserve easements or covenants that existed over the underlying land prior to the creation of the stratum estate [s 180(2)(b)],
- (c) preserve easements or covenants that affect only the common property and do not affect units [s 180(2)(c)],
- (d) restore the fee simple or leasehold estate in the base land, whichever existed prior to the deposit of the unit plan [s 180(2)(a)],
- (e) vest ownership of the base land in the former unit owners in shares proportional to their entitlements (this includes their beneficial entitlement to common property) [s 180(2)(a)(i) and (ii)],
- (f) dissolve the body corporate [s 185],
- (g) extinguish every registered interest in or caveat or notice of claim over any unit or the common property [s 183(2)] once the Registrar receives the body corporate certificate that complies with s 216 (Form 33, Schedule 2 of the Regulations) and s 177(6), and
- (h) record the above extinguishment referred to in (g) above against the affected computer register [s 183(4)].

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Cancellation without court intervention, continued

Effect of cancellation of a subsidiary unit plan

The effect of a cancellation of a subsidiary unit plan is to:

- (a) cancel every easement or covenant over or appurtenant to any unit [s 181(2)(c)],
 - (b) preserve easements or covenants that existed over the underlying base land prior to the creation of the stratum estate [s 181(2)(b)],
 - (c) preserve easements or covenants that affect only the common property and do not affect units [s 181(2)(b)],
 - (d) restore the stratum estate in the principal unit from which the subsidiary unit was created [s 181(2)(a)],
 - (e) vest ownership of the principal unit in the former unit owners of the cancelled subsidiary unit plan in shares proportional to their entitlement (this includes their beneficial entitlement to common property) [s 182(3)],
 - (f) dissolve the subsidiary body corporate [s 185],
 - (g) extinguish every registered interest in or caveat or notice of claim over any unit or the common property [s 183(2)] once the Registrar receives the body corporate certificate that complies with ss 216 (Form 33, Schedule 2 of the Regulations) and s 177(6), and
 - (h) record the above extinguishment referred to in (g) above against the affected computer register [s 183(4)].
-

Effect of cancellation (stage unit plan – non-layered development and head unit plan on layered development)

- (a) The cancellation of a stage unit plan for a standard unit title development (non-layered) or a head unit title development (the first tier in a layered development) has the same effect as for the cancellation of a standard or head unit title development (see [Effect of cancellation of standard unit title or head unit title development plans](#) above), except that the estates described in s 180(2)(a)(i) and (ii) vest as provided for in s 182(3) instead of s 182(1).
 - (b) Vesting of shares is calculated as follows:
 - (i) in relation to former FDUs, it is in accordance with s 182(3)(a) and (4), and
 - (ii) in relation to other units, it is in accordance with s 182(3)(b) and (5).
-

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Cancellation without court intervention, continued

**Effect of
cancellation
(stage unit plan –
layered unit
development)**

- (a) The effect of a cancellation of a stage unit plan for a subsidiary unit title development is the same as for the cancellation of a subsidiary unit title development (see [Effect of cancellation \(stage unit plan – layered unit development\)](#) above) except that the estates described in s 181(2)(a)(i) and (ii) vest as provided for in s 182(3) instead of s 181(2)[s 182(2)].
 - (b) Vesting of shares is calculated as follows:
 - (i) in relation to former FDUs, it is in accordance with s 182(3)(a) and (4), and
 - (ii) in relation to other units, it is in accordance with s 182(3)(b) and (5).
-

20. Cancellation with court intervention

Introduction for notices of application to High Court for cancellation of unit plan

- (a) An application to the High Court for cancellation of a unit plan can be made by one of the parties specified in s 187(1)(a) to (c) or s 165(2)(b).
 - (b) When application is made to the Court, the Registrar will receive notice of that application from the applicant in Form 21, Schedule 2 of the Regulations [s 187(2)(g)]. Upon receipt of that notice the Registrar will enter a notification on the supplementary record sheet that an application to cancel the unit plan has been made [s 187(3)].
-

Notice to Registrar of discontinuance or refusal of application by High Court for cancellation of unit plan

- (a) If the Court refuses the cancellation of the plan or the applicant discontinues the proceedings, the applicant is required to lodge notice of that to the Registrar in the prescribed form (Form 22, Schedule 2 of the Regulations) [187(4)].
 - (b) On receipt of this notice, the Registrar will record on the supplementary record sheet that the application is not proceeding [s 187(4)].
-

continued on next page

Cancellation with court intervention, continued

Application to Registrar of authorisation of application by High Court for cancellation of unit plan

If the Court authorises the cancellation of the plan, an application for cancellation of the unit plan can be lodged with the Registrar.

- (a) The applicant has up to six months after the date of the declaration of the Court to lodge an application to cancel the unit plan with the Registrar [s 189(2)].
- (b) The application must be:
 - (i) in the prescribed form (Form 23, Schedule 2 of the Regulations),
 - (ii) accompanied by a copy of every declaration or order of the High Court made under s 188 [s 189(3)],
 - (iii) accompanied by a certificate by the body corporate as to the matters set out in s 177(6) except as the High Court directs otherwise. These matters are (unless modified) that:
 - necessary documents have been served
 - time periods for Court action have expired
 - rates have been paid.[s 189(5)(a)]
 - (iv) accompanied by a separate certificate from a registered valuer reassessing ownership interest and any proposed ownership interest of all of the units in the unit title development in accordance with s 177(7) [s 189(5)(b)].

Note: A s 216 certificate is unnecessary as the Court hearing has dealt with the objection process.

continued on next page

Cancellation with court intervention, continued

**Effect of
cancellation of a
unit plan
authorised by the
Court**

- (a) Sections 180 – 182 and 184 apply (unless the High Court directs otherwise) to the cancellation of a unit plan authorised by the Court [s 189(5)(b)].
- (b) Sections 185 and 186 also apply [s 189(5)(c)].
- (c) Depending on the type of plan involved, the effect of such cancellation is the same as described in:
 - (i) Effect of cancellation of standard unit title or head unit title development plans, page 70,
 - (ii) Effect of cancellation of a subsidiary unit plan, page 71,
 - (iii) Effect of cancellation (stage unit plan, page 71, and
 - (iv) Effect of cancellation (stage unit plan – layered unit development, page 72.
- (d) Section 183 (extinguishment of registered interests, etc) does not automatically apply. This is because the Court may give directions as to the modifications or extinguishment of registered interests, caveats, or notices of claim in relation to:
 - (i) any unit,
 - (ii) the common property, and
 - (iii) the base land[s 188(3)(c)].

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Cancellation with court intervention, continued

Registration actions on cancellation of unit plan where authorised by Court

On cancellation of the unit plan, the Registrar will:

- (a) record the cancellation on the computer registers for the units,
 - (b) record the extinguishment of registered interests in or caveats or notices of claim over any unit or the common property, as directed by the Court [s 188(3)(c)],
 - (c) cancel those computer registers for the units,
 - (d) create computer registers for the base land or the principal unit (whichever the case may be) and show the ownership in the relevant shares in accordance with s 184,
 - (e) give notice to the relevant territorial authority that
 - (i) the plan has been cancelled, and
 - (ii) the body corporate has been dissolved [s 186]
- Note:** There is no prescribed form for such notice.
- (f) note the cancellation on the supplementary record sheet and cancel the relevant supplementary record sheet, and
 - (g) if a subsidiary unit title development has been cancelled, note the cancellation on the supplementary record sheet for the parent unit title development [s 186(2) and (3)].
-

Service of notice

21. Notice

Service of notice Any notice specified in the 2010 Act must be in writing and may be served by any of the methods set out in s 205.

Transition from the Unit Titles Act 1972

22. Overview

Introduction

Subpart 5 of Part 5 [ss 218-233] covers a number of transitional matters as well as statutory repeals and consequential amendments.

This section deals with transitional matters that are expressly provided for in the 2010 Act. It also covers transitional arrangements that are not expressly provided for in the 2010 Act, but which must be dealt with in order to facilitate the transition from the 1972 Act to the 2010 Act.

Notwithstanding the 1972 Act being repealed by the 2010 Act, developments existing at the commencement of the 2010 Act and their bodies corporate are treated as unit title developments and bodies corporate for the purposes of the 2010 Act [s 219(2)] (see s 219 for definition of **existing unit title development**).

Contents

This section contains the following topics:

Topic	See page
Body corporate	79
Common property	80
Matters started before but actioned after commencement of 2010 Act	81
Others	84

23. Body corporate

Existing body corporate rules can continue for 15 months

- (a) Section 37 and Schedules 2 and 3 of the 1972 Act continue for a further 15 months from the commencement of the 2010 Act.
 - (b) The implied body corporate rules in those Schedules, and any amended rules in place at the time the 2010 Act comes into force, can continue on for that 15 months' period.
-

Body corporate may opt out of transitional arrangement

A body corporate may opt out of that transitional arrangement and adopt the new rules under the new legislation or amend those rules under the 2010 Act if it chooses before the end of that period [ss 220 and 221].

Changes to retained body corporate rules

- (a) Because s 37(7) of the 1972 Act remains in being for that 15 months' period, changes to those continuing rules are allowed to be made prior to the end of that period. Under s 37(7), such changes are to be effected by notification in Form 4 of Schedule 1 of the 1972 Act.
- (b) Notwithstanding the repeal of the 1972 Act including Schedule 1, the Registrar will accept notification in Form 4.

Note: The provisions in the 2010 Act dealing with the body corporate operational rules, express or implied, have the same 15 months' postponed commencement date unless the body corporate decides otherwise [see ss 220 and 221].

24. Common property

Existing common property vested in body corporate

On the date the 2010 Act comes into force, existing common property is vested in the body corporate [s 223].

Noting of supplementary record sheets with common property ownership details

The vesting of legal ownership and beneficial ownership of the common property in the body corporate and unit owners respectively [s 47(a) and (b)] is deemed to be noted on the supplementary record sheet, whether or not it has actually been so noted [s 224].

25. Matters started before but actioned after commencement of 2010 Act

Unit plans approved prior to commencement of 2010 Act – open space units

- (a) If a unit plan lodged for deposit on or after the commencement of the 2010 Act
- (i) has an approval date preceding that date, and
 - (ii) the approval date has not lapsed as at the date the application to deposit is made

then a s 5(1)(g) certificate under the 1972 Act may be accepted by the Registrar instead of a certificate under s 32(2)(a) of the 2010 Act, provided the former is dated prior to the commencement date of the 2010 Act [s 32(2)(a)].

- (b) If a certificate under s 5(1)(g) could have been, but was not, given by the territorial authority before the commencement date, the Registrar will instead accept a certificate under s 32(2)(a) [s230(2)(b)].

Note:

- Section 230 applies also to a redevelopment plan under s 69 [s230(1)(b)].
- The point of this section is that a principal unit shown on such a plan could be an open space unit that otherwise would not be acceptable as it does not comply with the requirements of s 7(1)(b) of the 2010 Act.

Proceedings commenced but not completed under 1972 Act

- (a) Section 227 says that judicial proceedings commenced under the 1972 Act, but not completed before the 2010 Act, commences can be continued and completed as if the 2010 Act had not been passed. However, the parties can agree otherwise so that proceedings can be transferred to the appropriate decision-maker under the 2010 Act.
- (b) This is unlikely to have any significant impact as proceedings in a title/survey context would be handled, and continue to be handled, by the High Court. But it is worth noting that this arrangement could result in the outcome of proceedings being decided in terms of the 1972 Act years after its repeal.

continued on next page

Matters started before but actioned after commencement of 2010 Act, continued

Background: Dealings started before but lodged after the 2010 Act commences

- (a) The 2010 Act does not have any specific transitional provisions relating to other non-judicial processes commenced in terms of the 1972 Act but not completed before the commencement of the 2010 Act. Nevertheless this will become an important issue in the months following the 2010 Act coming into force.
 - (b) One of the features of the 2010 Act is that most of the processes will be triggered by body corporate resolutions which no longer have to be unanimous. Seventy five percent of the eligible voters will carry most resolutions with the dissenting minority given the ability to object.
 - (c) Another feature of difference is that many procedures that formerly required the consent of all unit owners or other interest-holders, such as mortgagees, now provide that such persons are entitled to object after being given notice.
-

General rules for lodgement after commencement of 2010 Act

- (a) There will be many instances (such as a redevelopment) where a process has been started and the necessary resolution has been passed or the required consents have been obtained. Logically they should be treated as though the 1972 Act was still in force unless the parties agree otherwise, in which case they would need to restart the process under the 2010 Act.
- (b) We can therefore come up with some rules of thumb which comply with the principle of statutory interpretation expressed in s18 of the Interpretation Act 1999 as follows:
 - (i) instruments lodged before the commencement of the 2010 Act will be dealt with in terms of the 1972 Act even though they may be processed after that commencement date, and
 - (ii) instruments lodged on or after the commencement date of the 2010 Act, but based on processes commenced under the 1972 Act, will be accepted if the instruments are drawn up in terms of the 1972 Act.

Note: An example is where a body corporate resolution (unanimous or simple majority depending on the process) or interest-holder consent is required and obtained. This will be the case regardless of whether the documents are dated before or after the commencement date.

continued on next page

Matters started before but actioned after commencement of 2010 Act, continued

Rules in relation to stage developments

In the case of stage developments that are partially completed as at the commencement date, this does not mean that the whole development will be governed by the 1972 Act through to completion. For instance, a further stage that is already under way at that date may be dealt with under the 1972 Act but a further stage that is actioned from beginning to end after that date will be governed by the 2010 Act.

26. Others

Existing unit entitlement

Existing unit entitlement is deemed to be ownership interest [s 222].

Redevelopment by amendment to unit plan – open space units

Section 231 allows the redevelopment by amendment to a unit plan under s 67 even though a redeveloped unit fails to conform to the description in s 7(1)(b)(i) (does not contain a building or part of a building or is not contained in a building) (see [Redevelopment by amendment to existing unit plan, page 38](#)).

APPENDICES

27. Overview

Introduction

The 2010 Act differs significantly from the 1972 Act. It now accommodates residential developments, commercial offices, retail establishments, industrial parks, retirement villages, and any number of mixed use developments.

Contents

These appendices contain the following topics:

Topic	See page
Appendix A: Points of difference from 1972 Act	86
Appendix B: Certification table	94
Appendix C: Provisions relating to issue of computer register and dealing with underlying estates	97

Appendix A: Points of difference from 1972 Act

28. Points of difference

Principal unit

A principal unit is defined in s 7 and must now contain a building or part of a building or be within a building unless it is a car park. This means a unit cannot be a three-dimensional space without being referenced to a building or part of a building. Note a car park means a space for parking a single vehicle [s 5].

Layered and subsidiary unit title developments

- (a) Subsidiary and layered unit title developments are defined and described in ss 19 and 20. For what these may look like, see examples in s 9(2) and examples 2 and 3 in Schedule 1.
 - (b) A subsidiary unit title development is essentially a subdivision of a principal unit (and any associated accessory unit or units) into new units and common property. A layered unit title development is a grouping of a head unit title development and one or more subsidiary unit title developments.
 - (c) In the context of a layered development:
 - (i) the head unit title development is the development created by a subdivision of land (fee simple or leasehold – the first layer) where at least one principal unit is subdivided to create a subsidiary unit title development, and
 - (ii) a parent unit title development in relation to a particular subsidiary unit title development (second or subsequent layer) means the unit title development containing the principal unit that was subdivided to create the subsidiary unit title development.

(see the definition of both terms in s 5 and the examples referred to in (a) above)

Note: In a two layer development, the head and parent development will be one and the same.
 - (d) While the head unit title development will never change in a layered development, irrespective of the number of subsidiary layers, there could be any number of parent unit title developments, depending on how many layers are created.
-

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Points of difference, continued

- Common property**
- (a) Common property continues to be all the land that is not comprised in a unit or, in the case of a subsidiary unit development, all that part of the subdivided principal unit that is not further subdivided into a unit (see definition in s 5).
 - (b) Legal ownership of the common property is vested in the body corporate. This is a significant change to the 1972 Act where the common property was owned by the unit owners in shares proportionate to their unit entitlement [s 54(1)].
 - (c) Owners of all the units in a development are beneficially entitled to the common property in shares proportional to the ownership interest (or proposed ownership interest in the case of stage unit developments) in respect of their respective units [s 54(2)].
 - (d) Although no computer register can issue for the common property, the ownership by the body corporate and the beneficial ownership by the unit owners must be noted on the supplementary record sheet [ss 46 and 47].
 - (e) The body corporate may sell, lease, or license the common property and may grant or acquire easements and covenants over or in favour of it as well as enter into surrenders or variations of same [s 56].

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Points of difference, continued

Ownership interest and utility interest

- (a) Ownership and utility interests replace the unit entitlement under the 1972 Act.
- (b) Ownership interest is the interest assigned to principal and accessory units by a registered valuer based on a unit's relative capital value. It is used to determine a range of things relating to a unit owner's property right in the development, such as their share of common property, their voting share when a poll is requested, and their contribution to any capital improvement fund [s 38].
- (c) Utility interest is also assigned to principal and accessory units. The utility interest is calculated as being the same as the ownership interest, but the body corporate can vote to change the calculation to a more fair and reasonable apportionment of costs, for example by equal shares. The utility interest is used to determine the extent of a unit owner's contribution for operational and maintenance expenses [s 39].
- (d) This changes the regime under the 1972 Act, where all contributions were based on relative capital value, and no reassessment was permitted.
- (e) All units (principal, accessory, proposed principal, and proposed accessory) must be assigned ownership and utility interests at the outset. While they are the same unless stated otherwise, the developing owner can fix a different utility interest prior to the plan being deposited and the body corporate being created [s 39(2)].
- (f) Both interests may be reassessed at any time, as long as three years has elapsed since the last reassessment, but reassessment is compulsory in the case of some redevelopments and for all unit plan cancellations [ss 41(3), 69(3)(b), and 177(7)].
- (g) An FDU is also assigned a proposed ownership interest (which is the sum of the ownership interests of the proposed principal and accessory units within the FDU) and a utility interest must be assigned if it is used as a place of residence or business.

Access lots

An access lot is defined in s 5 and now a share in an access lot can be incorporated into a unit development as part of the common property under s 55, even though the other shares remain outside that development. Also, an access lot can be added later under s 58 as an addition to the common property.

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Points of difference, continued

Replacement of unanimous resolution

- (a) The need for intended actions by the unit owners to be supported by unanimous body corporate resolutions has been replaced by super or simple majority resolutions, ie 75%+ or 50%+ in most cases. That is offset with objection or grievance processes that are available for dissenting minorities.
 - (b) In order to satisfy the Registrar that
 - (i) the necessary resolutions have been passed,
 - (ii) the objection or grievance process has been exhausted, and
 - (iii) there are no further impediments to the process being given effect to, such as redevelopment or cancellation of a unit plan,

a body corporate certification system has been created. This enables the Registrar to take assurance from the certification and rely on it.
-

Redevelopment

- (a) Redevelopment has been expanded to include the transfer of a unit or part into the common property [s 69(3)(b)]. This was previously a stand alone process outside the range of a redevelopment.
 - (b) There is also the creation of a separate simple redevelopment [ss 65 - 67] process for the adjustment of boundaries between units without increasing or reducing the number of units or involving the common property. This process will require a new plan showing only the units affected by the amendment. The new plan will be added to the existing plan set rather than as a replacement for it. In this case, the body corporate will need to certify that the qualifying criteria set out in s 65(1) apply [s 65(4)].
-

RMA certifications for stage unit developments

- The most significant change is to the territorial authority certification under the RMA. The PUD plan continues to be the plan of subdivision for the purposes of s 223 of the RMA but the certification required under s 224(c) of the RMA may now be given in relation to:
- (a) either the PUD plan, or
 - (b) each stage and the complete unit plan [s 28].
-

continued on next page

Points of difference, continued

Relationship with Public Works Act 1981

The provisions dealing with the interaction between the Unit Titles Acts and the Public Works Act 1981 have been enhanced to enable the Registrar to deal better with the acquisition of unit titled land under the Public Works Act 1981 when that land is still in a unit.

Section 15 in the 2010 Act is broadly worded and is designed to allow the Registrar to give effect to the taking of land under the Public Works Act, whether the land is already common property, is in a unit, or is a mixture of both.

It is intended to reflect the case law (see *Attorney-General v Body Corporate 68792 [2007] NZLR 671*).

Easements

The ability of the body corporate and unit owner to deal with existing easements and land covenants affecting the base land, and to create and deal with new easements and land covenants over or in favour of common property and units, has been extended [ss 60-63]..

Body corporate formation and powers and duties

- (a) The body corporate is formed on deposit of the unit plan and continues to take its name from the plan reference number (see s 75). The members of the body corporate are the owners of the units [s 76(1)]. The body corporate can do anything authorised by the 2010 Act and the Regulations for the purpose of performing its duties or exercising its powers a natural person of full age and capacity can do [s 77].
- (b) The powers and duties of the body corporate are set out in s 84. Although it remains as, essentially, an administrative body responsible for the unit development, it now owns the common property (see [Common property](#) above).
- (c) Regulation 17 of the Regulations deals with execution of documents by the body corporate and is loosely based on s 180 of the Companies Act 1993.
- (d) The body corporate seal has been dropped. Instead, the body corporate signs by:
 - (i) the body corporate chairperson, or
 - (ii) another person appointed by the body corporate under regulation 12(2).

The executing party's signature must be witnessed in accordance with regulation 17(4). The options available are designed for different size bodies corporate.

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Points of difference, continued

Body corporate – signing on behalf of unit owners

- (a) The body corporate may now sign documents on behalf of a unit owner, who fails or refuses to sign, if the document is needed to give effect to a resolution passed by the body corporate and, if an objection was made, confirmed by the High Court. This is a new aspect to the legislation.
- (b) Before the body corporate can exercise this power, it has to request the unit owner to sign the document by giving 10 working days' notice.
- (c) If a body corporate signs a document using this power, a certificate pursuant to s 86(5) that covers off compliance with subsection (1) to (4) of that section must accompany the document when it is lodged with the Registrar. The Registrar is entitled to rely on that certificate.

The form of certificate is Form 10, Schedule 2 of the Regulations.

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Points of difference, continued

Body corporate operational rules

- (a) Previously called the 'body corporate rules' under the 1972 Act these rules are prescribed in Schedule 1 of the Regulations. They will apply by default unless amended, revoked, or added to by the body corporate and will bind the parties specified in s 105(3).
- (b) One notable change is that alterations to the default rules may be made prior to the deposit of the unit plan and the creation of the body corporate by virtue of s 105(1). The alterations will be made by the land owner and the documentation will accompany the instruments lodged to deposit the unit plan.

Notification of these operational rules can be by means of a notice in Form 14, Schedule 2 of the Regulations.
- (c) The body corporate may change the operational rules at any time after the unit plan is deposited [s 105(2)]. The restrictions as to what may be amended or added to are set out in s 106(1) and (2) but there is no specific policing responsibility for the Registrar as to whether or not such changes are ultra vires.
- (d) Any change to the rules has no effect unless the Registrar is notified in the prescribed form (Form 15, Schedule 2 of the Regulations) under s 106(3)(b).
- (e) Another change brought about by the availability of the layered unit development is the priority of the operational rules of the respective bodies corporate created for the subsidiary unit developments in the event of conflict. In this case, the rules of the head or parent bodies corporate will prevail over those of the subsidiary body corporate. (See s 107 for specific details about this and other restrictions; there is no policing role for the Registrar under this section.)

Notice of change to body corporate's address for service

- (a) The body corporate may notify the Registrar of any change to its address for service, which is no different from s 50(3) of the 1972 Act.
- (b) The difference is that this is no longer a requirement in the 2010 Act but, unlike the previous legislation, the Regulations now provide a form for this notification (Form 16, Schedule 2 of the Regulations).
- (c) The notice will be recorded against the supplementary record sheet.

continued on next page

Points of difference, continued

- Plan numbering**
- (a) The 2010 Act does not specify how staged development and substituted plans are to be numbered, unlike the 1972 Act. Plan numbering convention will be determined by LINZ. At this stage it is proposed to continue with the plan numbering convention established by the 1972 Act and implemented by Landonline.
 - (b) There are three new Landonline plan types (also referred to as 'plan purpose'):
 - (i) subsidiary proposed unit development plan – a subsidiary unit plan that subdivides a principal unit on the developed portion of an uncompleted stage unit development,
 - (ii) subsidiary standard unit plan – a subsidiary unit plan that subdivides a principal unit on a standard unit development, and
 - (iii) simple redevelopment plan – a redevelopment plan under ss 65-67.
 - (c) A subsidiary proposed unit development plan and subsidiary standard unit plan will have a new plan number different from the parent unit development.
 - (d) A simple redevelopment unit plan [s 65-67] will have the same number as the existing unit development plus a suffix letter.
-

Appendix B: Certification table

Certificates required for each type of unit plan	Unit plan [s 17]	Subsidiary unit plan [s 21]	PUD plan [s 24(2)(a)]	Stage unit plan [s 24(2)(b)]	Complete unit plan [s 24(2)(c)]	SPUD plan [s 30 only]	Redevelopment by amending plan [ss 65-67]	Redevelopment with new plan [ss68-71]	Plan for conversion of existing scheme (subpart 3 Part 4)	Substituted unit plan for transfers, leases of common property [ss56 57]	Substituted unit plan for additions to common property [ss 58-59]	Cancellation of unit plan by body corporate application [s 177]	Easements and covenants over or in favour of common property	Easements and covenants over or in favour of units
Section 223 RMA approval	✓	✓	✓	x	x	✓	✓	✓	x	x##	x##	x	x	x
Section 224(c) RMA consent certificate	✓	✓		✓*	✓*	✓*	✓	✓	x	x	x	x	x	x
Section 224(f) RMA building certificate	✓	✓	✓	x	x	✓	✓	✓	x	x	x	x	x	x
Section 32(2)(a) certificate by the Territorial Authority	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	x	x	x	x
Section 32(2)(b) valuers certificate	✓	✓	✓	✓	✓	✓	x	x	✓	x	x	x	x	x

Certificates required for each type of unit plan	Unit plan [s 17]	Subsidiary unit plan [s 21]	PUD plan [s 24)(2)(a)]	Stage unit plan [s 24(2)(b)]	Complete unit plan [s 24(2)(c)]	SPUD plan [s 30 only ◆◆	Redevelopment by amending plan [ss 65-67]	Redevelopment with new plan [ss68-71]	Plan for conversion of existing scheme (subpart 3 Part 4)	Substituted unit plan for transfers, leases of common property [ss56 57]	Substituted unit plan for additions to common property [ss 58-59]	Cancellation of unit plan by body corporate application [s 177]	Easements and covenants over or in favour of common property	Easements and covenants over or in favour of units
Section 32(3)(b) valuers certificate	X	✓	✓ * * *	X	X	X	X	X	X	X	X	X	X	X
Section 216 RMA certificate by the body corporate	X	✓	X	X	X	✓ * * * * *	X	✓ #	X	✓ Additional certification [s56(5)]	✓ Additional certification [s177(6)]	✓	✓	X
Section 65(4) corporate certificate	X	X	X	X	X	X	✓	X	X	X	X	X	X	X
Section 67(1)(b) valuers certificate	X	X	X	X	X	X	✓	X	X	X	X	X	X	X
Section 69(3) valuers certificate	X	X	X	X	X	X	X	✓	X	X	X	X	X	X
Section 348 Local Government Act – ROW approval by TA	X	X	X	X	X	X	X	X	X	X	X	X	✓ ⁶ Only required for rights of way +++	✓ Only required for rights of way +++

Certificates required for each type of unit plan	Unit plan [s 17]	Subsidiary unit plan [s 21]	PUD plan [s 24](2)(a)]	Stage unit plan [s 24(2)(b)]	Complete unit plan [s 24(2)(c)]	SPUD plan [s 30 only] ◆◆	Redevelopment by amending plan [ss 65-67]	Redevelopment with new plan [ss68-71]	Plan for conversion of existing scheme (subpart 3 Part 4)	Substituted unit plan for transfers, leases of common property [ss56 57]	Substituted unit plan for additions to common property [ss 58-59]	Cancellation of unit plan by body corporate application [s 177]	Easements and covenants over or in favour of common property	Easements and covenants over or in favour of units
Section 63(6) body corporate certificate	x	x	x	x	x	x	x	x	x	x	x	x	x	✓
Section 177(b) valuer's certificate	x	x	x	x	x	x	x	x	x	x	x	✓	x	x

- (a) * that the s 224(c) certificate may be given in respect of either the PUD plan or in respect of the first stage plan. If it is the former the certificate is not required on subsequent stage development plans or the complete unit plan. But if it given for the first stage plan another s 224(c) certificate must be produced with each later stage plan and the complete unit plan [s 28].
- (b) ** In the case of a stage subdivision of a principal unit, a certificate by a registered valuer assessing the ownership interest of that principal unit being subdivided [s 32(3)(b)] – not required for a stage subdivision of fee simple/lease/licence.
- (c) *** **Only** if the territorial authority has not certified the PUD plan under s 223.
- (d) **** If the land is stratum lease or licence the additional certification as to consent under s 30(5)(b) is required [s 30(8)] .
- (e) # in addition to the standard certification under s 216 additional certifications as required by s 69(6) should be added to the certificate
- (f) ## Note that this relates to the substituted unit plan only, the plan defining the land being transferred in or out will be separately defined on another plan that may require approval under s 223 and certification under ss 224(c) and (f) RMA
- (g) +++ rights of way only and not required for ROW either if defined on unit plan that bears approval under s 223 RMA
- (h) ◆◆ A SPUD plan required because of a redevelopment under ss65-71 will not need any certifications. The redevelopment plan is the plan of subdivision and will be associated with any certifications required to support the redevelopment.

NOTE: A unit plan required for the purposes of s 15 may resemble the plan required for ss 56-57 but may also have additional aspects or more than one plan may be required. For example, the land taken may be a unit. Because of that the table does not cover such a plan as there are several possible permutations.

Appendix C: Provisions relating to issue of computer register and dealing with underlying estates

29. Restrictions and special rules applying to issue of computer register and dealing with underlying estates

Restrictions on dealing with underlying estate

- (a) The fee simple or lease estate shall not be dealt with except as provided for elsewhere in the 2010 Act [s 50(3)]. The exceptions are:
 - (i) easements may be varied, surrendered, or transferred [s 61(1)],
 - (ii) covenants may be varied or revoked [s 61(1)],
 - (iii) s 51 – on creation of stratum estate in a subsidiary unit development the principal unit subdivided is not capable of devolving or being dealt with except as provided otherwise in Act [s 61(1)],
 - (iv) s 53 – accessory units incapable of being independently dealt with (transferred, mortgaged) except in conjunction with a principal unit.
- (b) The only exception is a separate transfer of an accessory unit to a person who owns a principal unit as long as the accessory unit so transferred is included in the computer register for that principal unit [s 53(4)].
- (c) The accessory unit must be transferred free of registered interests and it becomes subject to whatever registered interests to which the principal unit is subject [s 53(5) and (6)].

continued on next page

Restrictions and special rules applying to issue of computer register and dealing with underlying estates, continued

Estates and interests (other than easements and land covenants) affecting the base land

Please note the following:

- (a) The base land at the time the unit title development is created may be subject to various estates and interests which are not surrendered, discharged, or otherwise extinguished before the unit plan is deposited and computer registers issued for the stratum estate.
 - (b) If the base land (fee simple or lease/licence) is subject to a lease, there is no provision for the lessee or licensee to consent to the unit title development. If the lessee/licensee does not consent, the lease or licence must be terminated.

Note: This is not to be confused with a subdivision of a lease or licence into unit titles
 - (c) Mortgages, charges, encumbrances, caveats, and notices of claim that are not extinguished are brought forward onto the computer registers for the units
 - (d) Existing easements and land covenants are covered by ss 60-61 and section 13 of this guideline.
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Appendix D: Restrictions on issue of computer register and dealing with underlying estates

Technical requirements and consents for plan deposit											
Requirements for each type of unit plan	Unit titles development s 17	Subsidiary unit development s 21	PUD plan s 24	Stage unit plan s 24	Complete unit plan s 24	SPUD plan s 30	Redevelopment plan by amending plan ss 65-67 fee simple plan)	New redevelopment plan ss 68-71	Conversions Subpart 3 Part 4	Substituted unit plan for transfers of common property (ss56-57)	Substituted unit plan for additions to common property (ss58-59)
Computer register free from all limitations S32(1)(a)	✓	N/A	✓	N/A	N/A	N/A	N/A	N/A	✓	x	x
Whole of affected land held in one computer register S32(1)(b) and (c)	✓*	N/A	✓*	N/A	N/A	N/A	N/A	N/A	✓*	x	x
Lessor/licensee (where applicable) and interest holders have consented (mortgage, encumbrance, charge, caveat, claimant)	✓ s 32(1)(d)	✓ s 32(3)(a)	✓ ss 32(1)(d) or 32(3)(a) Depending on whether subdivision of land or principal unit	x Not required as given for PUD plan which is the plan of subdivision	x Not required as given for PUD plan which is the plan of subdivision	x Not required - see s 30(7)	x Not required – see s 65(3)	x Not required– see s69(2)	See s197(1) – instead of consent under s32 the conversion process has special consent or notice requirements	x	

- Note that s 32(1)(b) and (c) do not prevent the deposit of a plan if one computer register could properly be created for the land concerned [s33(1)].

NOTE that all plans must be approved as to survey before they can be deposited [s 33(2)(c)]