

# SUBDIVISIONS: New Techniques for Addressing Old Problems. Shared Ownership and Management.

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## INTRODUCTION

The techniques relating to design and control of subdivision of land in New Zealand are constrained by legislation. The Resource Management Act 1991, and previously the Town and Country Planning Act 1977, both control the subdivision of land on the presumption that subdivision is not permitted unless a rule provides for subdivision in some manner.

District Plans and in the past District Schemes have in the main controlled subdivision by specifying a number of specific criteria which have been required to be met to comply with a controlling rule.

These rules generally take a universal approach to specific matters relating to infrastructure, roading, water supply, sewage disposal, power and telephone.

Objective and Policy relating to subdivision and the relation to land use seem to have strengthened within District Plans prepared in terms of RMA. Rules have carried over similar techniques relating to the control of allotment density and design that were used in District Schemes T&CPA.

This particularly so in respect to the control of residential, rural/residential, commercial and industrial subdivision, that adopted minimum allotment area, dimension or shape factor control. The most contentious and difficult control regime is that relating to subdivision within the rural areas of New Zealand. In the past control was based on protecting land for productive agricultural or horticultural purposes, while preventing urban sprawl. Common techniques of control were usual based on a combination of minimum areas and the retention of economic farming units. To some extent these techniques in various guises, particularly minimum allotment areas, have been duplicated as subdivision control in District Plans.

New subdivision control techniques have been formulated to deal with environmental effects based matters in rural areas. These in general deal with three main issues:

- Landscapes
- Rural Amenity values
- Over or inappropriate domestication of rural area.

The control of subdivision relating to these matters is generally subjective, and is directly tied to actual or potential effects on the environment associated with land use change relating to the subdivision. This implies the likelihood of a discretionary activity approach to the control of rural subdivision.

## **INNOVATIVE OR NEW APPROACHES TO SUBDIVISION AND LAND OWNERSHIP.**

Subdivision controls based on minimum lot areas and dimensions tend to preclude innovative approaches to subdivision design and land ownership. Compliance with such rules leads to more of the same in terms of design. Non-compliance with rules may require a subdivision application to run the gambit of a publicly notified application. Compared to a non notified application, this has the distinct commercial disincentive to the applicant of lack of certainty of out come, with the prospect of major time delay and costs, associated with the process. Unless there is a significant market advantage to an innovative non-complying approach, or circumstances of the site leave no other options, it is unlikely that a subdivider will favour a notified application over a non-notified approach.

In summary the technique adopted will depend on economic risk verses certainty.

In the cases, generally in rural areas where subdivision applications are by default either discretionary or non complying activities, and most if not all subdivisions are notified, there is an innate risk of uncertainty of outcome which may in fact encourage innovation in seeking to meet objectives and policies relating to subdivision of land.

Innovation is driven by economic and market considerations as well as land characteristics. The following may encourage an innovative approach:

- Production of an allotment or living environment, which has superior amenity, landscape and land management to other traditional alternatives, and achieves a premium in the market place.
- Site characteristics, such as location, topography, vegetation, surrounding landscape and land use character are such that a traditional approach to subdivision would be unlikely to meet objectives and policies, and hence obtain resource consent.

## **EXPERIENCE IN THE QUEENSTOWN – LAKES DISTRICT AREA.**

My experience with non-tradition approaches to subdivision and land ownership, date back to the mid 1980's and cover the following subdivisions in the Queenstown Lakes District area:

- Alpine Retreat
- Closeburn Station
- Millbrook Resort
- Quail Rise Estate

### **ALPINE RETREAT**

Alpine Retreat is a 37 allotment rural /residential type subdivision created in 1985 under the provisions of the Town and Country Planning Act 1977, and the district scheme at that time.

Alpine Retreat is located on the east side of Moke Lake Road, on the crest of a high mountain ridgeline. The site exhibited a number of unusual characteristics, which determined an innovative approach to development:

- Freehold title emanating from the previous history of gold mining in the area, surrounded by Crown land, either Reserve land or Pastoral Lease land. No freehold neighbours with competing development potential or effected amenity values.
- Land had not been farmed in any active manner for some considerable period. Vegetation a mixture of regenerating indigenous vegetation and wilding pines. No perceived agricultural value.
- The area proposed for location of dwelling houses, was remote in terms of the landscape and not visible from the surrounding areas. The topography was physically suitable for house locations. The freehold site afforded a unique alpine experience in terms of location, vegetation and surrounding views.
- Extremely difficult to access.

The District Scheme did contain a provision for a rural/residential zone, which was to be acquired on a site by site basis by Scheme Change. The criteria and controls for the zone were inappropriate for the proposed subdivision. The Council initially agreed with the developer to initiate a special zone for the proposal. This was option was abandoned by Council, in the too hard basket. The developer proceeded by way of specified departure, T&CPA 1977. This approach was successful because of an innovative approach, which dealt with common ownership of land surrounding the development, services and access road. The lack of submission or objection, mainly because of the isolated location was vital to obtaining the Council approval to the subdivision. The subdivider agreed with the Council, to upgrade Moke Lake Road, then restricted to 4 X 4 vehicles in winter, to a sealed all weather standard, including the relocation of the intersection onto the Queenstown – Glenorchy Road to a safe position.

The subdivision created 37 lots varying in area from 2,950m<sup>2</sup> to 9,094 m<sup>2</sup>, spread along either side of a central access road running along the crest of the flat top ridge line.

The subdivision was innovative at the time for the following reasons:

- The allotment owners compulsory retained a common share in areas of surrounding common land considered to be essential to the visual and general amenity of the subdivision. (First subdivision in the district with commonly owned land for this purpose).
- The access road from Moke Lake Road to the to of the ridgeline, was at the extreme end of engineering construction. The Council did not want any maintenance liability. The access road and internal road through the residential area, is a private road (LGA1974) constructed and sealed to Council standards. The road is maintained by the residents. (Only private Road in the District).
- Water supply is a private community reticulated system.
- Dwelling house location and design restrictions, to protect internal amenity.
- A management company, Alpine Retreat Services Limited, of which every lot owner is a compulsory shareholder, owns the common land and private road. The service company maintains the private road, water supply and common areas. The company arranges dwelling house design approval.

The model is operating successfully with an extreme range in value of dwelling houses, from multi-million dollar homes to those in the affordable category. The service company is active and forfills its intended functions, and is in my opinion the reason that the extremes in socio-economic groupings exist successfully in the one subdivision.

## **CLOSEBURN STATION SUBDIVISION**

This subdivision is of more recent origin approved in 1994, under the provisions of the Resource Management Act 1991. It is located in the same region as Alpine Retreat, on the north side of the Queenstown – Glenorchy Road between Wilson’s Bay and the Twelve Mile Creek delta. The Closeburn Station property was formerly a 3,075 hectare pastoral lease property farmed in conjunction with a freehold farming property east of Queenstown. At the time the developer purchased the pastoral lease, there was no dwelling on the property and little in the way of pasture or other improvements. The farm by itself was not being operated as an independent farming unit.

The characteristics, which dictated the approach to the subdivision and development of the property, are as follows:

- Large rural property containing and surrounded by outstanding natural landscape.
- Significant areas of untouched or regenerating indigenous vegetation.
- Significant adjoining water bodies. Three mountain lake of outstanding quality, landscape, amenity and recreation (fly fishing). Moke Lake, Lake Kirkpatrick, Lake Dispute and tributary from Lake Dispute.
- Poor access to the site other than from Queenstown Glenorchy Road. Lack of available power and telephone other than from Queenstown Glenorchy Road.
- Free holding of the property resulted in significant areas of the pastoral lease returning to direct Crown control by the Department of Conservation, to protect, ecological values, landscape values and public access.
- Options available for the development of the remaining freehold land were as follows:
- Operate as a single farming unit. Would require significant capital investment for pasture creation, fencing and farm infrastructure. Would result in wide scale change to the landscape. Not deemed to be economic as a single farm.

- Subdivide into a number of separate intensive farming properties, for deer farming or other purposes. Would require significant upgrading and extension of access and services such as power and telephone. Fencing and pasture creation. Future dwelling houses and farm buildings spread over a wide area of the landscape.
- Restrict future development, in particular dwelling house to a confined part of the property able to absorb development, close to access and services, and prevent future development on the remainder of the property.

The third option was adopted. This involved the creation of 27 allotments having an area of between 2,034 m<sup>2</sup> and 1.65 hectares located on a terrace area above and not visible from the Queenstown – Glenorchy Road. The terrace area, elevated well above the road level, is separated from the road by a reserve area covered in indigenous vegetation. Access to the development is provided by a single access road through the reserve area. A controlled security gate on the entry road restricts access. The terrace area affords good views over Lake Wakatipu to the south while providing good winter sun exposure to the north through the Mountain valleys containing the Lakes.

Individual house sites were identified across the terrace area, with criteria based on obtaining, visual privacy and separation between sites and the surrounding area.

A different model of common land ownership to that used previously in the Alpine Retreat subdivision was adopted, because of the size and future use of the balance of the farmland. The 38 allotments were to be marketed as part of a working high country farm. As such the allotments for residential purposes were sold with a 1/27 share of the 2,000 hectare farming property, which could not be sold separately.

A detailed covenant structure was set up to control maintenance and farming of the common area, design control of dwellings within the subdivision. A management company made up of the allotment owners supports this. The subdivision, provided for a permanent farm manager and subdivision manager housed onsite on the common area. The common area also contains a community-meeting centre in the form of a rustic stable building with first floor lounge meeting areas. Other facilities such as tennis court and barbeque area are associated with this building. A number of backcountry style musters huts have been established on the property for the use of the residents.

The concept did not comply with the minimum allotment area control existing at the time in the rural zone. The application was processed as a non-complying activity and publicly notified. The application was supported by a detailed landscaping proposal, design controls and management regime for the common area. A covenant against further subdivision for 50 years was offered and imposed. No submissions opposing the development were received, and consent to land use and subdivision was granted by the Council.

It is pertinent the development area was well separated from any neighbouring properties, and did not raise any amenity concerns with neighbours.

The proposal would in terms of the land use and subdivision rules applying in the area fall to be determined as a discretionary activity. The change in activity status is encouraging in respect to innovative design.

The concept in the market has proved to be an outstanding success, with the subdivision now well developed with substantial dwelling houses erected on the property. The development has supported the improvement of the farming operation which is now self sufficient, having in the past run at a small loss financed by the collective owners.

## **MILLBROOK RESORT AND QUAIL RISE ESTATE**

An alternative means of control of development and subdivision as been used by Millbrook Resort and Quail Rise Developments. The primary control mechanism is a structure plan covering a special zone area, which enables various activities to occur on a location basis, either as a permitted or controlled activity. Other activities are either discretionary or non-complying.

Generally internal effects are left to be controlled by the developer, and there will be no controls on minimum allotment areas, internal yard set backs. The density of development is controlled by setting a maximum number residential dwelling units in the zone, and location control by structure plan.

The advantage of this form of control to the developer is that it gives an overall certainty in respect to development potential, while allowing maximum flexibility to respond to design alternatives to meet market demands, or changes in demands during development.

Millbrook Resort and Quail Rise Estate are examples of similar zones responding in different ways to market demand.

Millbrook Resort located immediately south west of Arrowtown, provides for a mixture of visitor accommodation and residential living, surrounding and in conjunction with an 18-hole golf course. The activities are controlled by a structure plan. The development proceeded in stages, and a number of different development and landownership alternative have been used within the development.

- Hotel Villa units, multi-story, unit title freehold ownership, with management structure.

- Separate single story residential units in close proximity to each other, on small area, freehold titles, with management structure.
- Two story, terrace-housing units, connected with party walls, on freehold titles, with separate detached garaging on separate title, with management structure.
- Separate freehold allotments, available for owner erection of single dwelling unit, subject to development design control and yard set backs.
- Separate freehold ownership of golf course and community and commercial buildings.

Quail Rise Estate located on a terrace area above the west bank of the Shotover River, north of State Highway 6, is developed as a low density residential subdivision, to satisfy local demand for housing in a low density environment, with high amenity values, good access to winter sun. The Quail Rise could have developed in a manner similar to Millbrook. The developer of the zone chooses a different market demand to satisfy. The zone is controlled by a structure plan in the same way as Millbrook, and is limited to 160 dwelling units.

The developer chose to create larger residential allotments, 1500 square metres and above, restricted by the developer to the erection of one detached dwelling unit and no further subdivision. Development design control and internal yard restrictions were imposed by developer-imposed covenant.

Stage 1 proceeded as a controlled activity, in those parts of the structure plan that provided for this activity. Stage 2 proceeded as a discretionary activity in other locations of the structure plan.

Visitor accommodation is also restricted by developer covenant, although parts of the zone provide for this activity. A large central reserve area on prime flat land has been provided within the development. The reserve has been developed with tennis court, and playground, at costs well beyond that required to satisfy the Council requirements.

This low-density residential approach has been well received by the residents, with a rapid erection of dwelling houses for permanent residents within the zone.

## **CONCLUSION**

Provided flexibility is provided in the control mechanisms for subdivision and development, new techniques will continue to evolve to deal with fundamental issues of sustainable development.

The retention and enhancement of ecosystems as part of subdivision and development, is increasing becoming an important mechanism. The holistic consideration of subdivision and development with future land use will necessitate a greater public acceptance of techniques, involving shared private ownership and prescribed management of areas of land which are sensitive to change in the environment.

A broad range of expertise is now expected in the formulation of subdivision and development proposals in sensitive areas.

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