

**Wellington City District Plan – Omnibus Plan Change**  
**Consideration of Easements as Matters of Control/Discretion**

**Scope of Proposed Change**

To amend SUB-R1, SUB-R2, SUB-R3, SUB-R4 and SUB-R5 to include easements as a matter of control/discretion and to amend the rule framework to provide the Council with control/ discretion to impose conditions easements for all subdivision activities. Additionally, to amend the chapeau of SUB-R2 for clarification as to when this rule applies.

**Background**

This issue was previously raised through the Proposed District Plan hearings, specifically via the submission of Kāinga Ora<sup>1</sup> that opposed the matter of control and associated matter of discretion *'any consent notices, covenants, easements or other legal instruments necessary'*, and sought that all rules in the Subdivision chapter are amended to remove this matter in relation to controlled and restricted discretionary activities<sup>2</sup>. The Independent Hearing Panel accepted Kāinga Ora's submission and recommended deletion of these references.

However, the Resource Consent Team have identified that the lack of provisions for easements on subdivisions is an issue in the resource consenting space, particularly for rules with Controlled and Restricted Discretionary activity status, where without control/discretion being specified in the rules, conditions can only be imposed by agreement of the applicant (ie as Augier conditions).

The certificate of compliance process for permitted subdivision activities does not provide for any conditions, and therefore the ability to consider easements in memorandums has been causing problems. As such, subdivisions where easements are necessary should not be a Permitted Activity. To resolve this, a new Controlled Activity rule could be added under SUB-R2. This change would enable consideration of easements, where the subdivision was around existing buildings that required the establishment of easements.

Surveyors typically include easements in a Memorandum of Easements on the survey plan submitted with a resource consent application, which means Land Information New Zealand (LINZ) has the ability to legally create the easements on deposit of the survey plan and include them on the Record(s) of Title for any new allotments. To ensure this process occurs, the Council's Subdivision Compliance Officer requires that there is a condition on the subdivision consent requiring that any easements identified on the survey plan are duly granted and reserved. Meeting this requirement is necessary to obtain certification for the subdivision under section 223 and/or 224 of the RMA. Certification from the Council is necessary before deposit of the survey plan with LINZ and the issuing of title(s). Easements can only be surrendered with the Council's approval (section 243 RMA). Hence without control or discretion in the rules, there is a risk that the appropriate easement conditions will be included on a resource consent decision (i.e. if the applicant does not agree to these conditions), creating an issue with the lawful establishment of the easements.

The rules where an additional matter of control/discretion is required are SUB-R1, SUB-R2, SUB-R3, SUB-R4 and SUB-R5. The remaining subdivision rules are all applied in conjunction with these rules.

<sup>1</sup> Submission points 391.194 and 391.195

<sup>2</sup> Section 42A Report: Subdivision

Easements are important for the following reasons:

- Easements provide a legal right for access to property that would otherwise be landlocked or physically difficult to access.
- Easements provide a legal right for services serving one lot to pass through another (three waters, telecommunication including broadband & power supply).
- With stratum freehold subdivision, easements provide a right of support so a lower lot cannot compromise structures which support a building on the lot above.
- With housing developments that have common walls between units, party wall easements in a freehold subdivision provide for the protection of these so adjoining unit owners cannot compromise the common wall between their units.
- Other easements can also be desirable such as easements for access rights for maintenance or parking but are used less often so referencing these is probably not necessary.

## Assessment of Options

### Relevant Options

For the purposes of this evaluation, the following options have been considered:

- **Option 1:** Retain the status quo
- **Option 2:** This option involves amending SUB-R1 through to SUB-R5 to include easements as a matter of control/discretion and to amend the rule framework to enable Council to have control/discretion of easements for all subdivision activities. The addition of a Controlled Activity rule within SUB-R2 is also required.

### Cost/Benefit Assessment

Option 1: Retain the status quo	
<p><b>Costs</b></p> <p><i>Environmental</i></p> <ul style="list-style-type: none"> <li>• The benefits (listed above) would not be achieved.</li> <li>• Reactive and inefficient responses to access/service issues.</li> <li>• Greater risk of legal disputes or constraints on infrastructure upgrades.</li> </ul> <p><i>Economic</i></p> <ul style="list-style-type: none"> <li>• Potential future costs for developers or landowners associated with obtaining Title or ensuring ongoing access.</li> <li>• Possible delays or redesigns when infrastructure or services are constrained by lack of easements.</li> </ul> <p><i>Social</i></p> <ul style="list-style-type: none"> <li>• Higher risk of future legal disputes over access to infrastructure or services.</li> </ul> <p><i>Cultural</i></p> <ul style="list-style-type: none"> <li>• Nil.</li> </ul>	<p><b>Benefits</b></p> <p><i>Environmental</i></p> <ul style="list-style-type: none"> <li>• Nil.</li> </ul> <p><i>Economic</i></p> <ul style="list-style-type: none"> <li>• Lower short-term consenting complexity.</li> <li>• Lower upfront compliance and consenting costs for developers (e.g. no need to survey or register easements).</li> <li>• More certainty for developers in processing times.</li> </ul> <p><i>Social</i></p> <ul style="list-style-type: none"> <li>• Nil.</li> </ul> <p><i>Cultural</i></p> <ul style="list-style-type: none"> <li>• Nil.</li> </ul>

### *Effectiveness and efficiency*

Option 1 is not considered to be an effective or efficient option to address the resource management issue as it results in the Council not being able to require and facilitate (through subdivision certification) the lawful establishment of easements.

### *Overall evaluation of Option 1*

Option 1 is not recommended.

### **Option 2:**

- **Amend SUB-R1 through to SUB-R5 to include easements as a matter of control/discretion and to amend the rule framework to enable the Council to have control/discretion over easements for all subdivision activities, except where no new easements are required**
- **Amend the chapeau of SUB-R2 to clarify its application**
- **Add new Controlled Activity rule under SUB-R2 to enable consideration of easements and esplanade strips and reserves**

#### **Costs**

##### *Environmental*

- Nil.

##### *Economic*

- Cost for resource consent where previously a permitted activity – associated requirements to meet any conditions prior to certification.
- Increases upfront consenting and legal costs (e.g. survey plans, easement instruments).

##### *Social*

- Nil.

##### *Cultural*

- Nil.

#### **Benefits**

##### *Environmental*

- Helps avoid disruption to essential services post-development.

##### *Economic*

- Cost of obtaining resource consent is offset by cost savings later with issues regarding legality of easements - reduces likelihood of costly legal disputes over access rights.

##### *Social*

- Avoids future disputes between neighbours or between landowners and the Council.
- Promotes fair and transparent development outcomes by ensuring long-term access arrangements are visible and secure.
- Increases certainty for property owners and infrastructure providers.

##### *Cultural*

- Nil.

### *Effectiveness and efficiency*

Option 2 is considered to be an effective and efficient option to address the resource management issue as it results in the Council being able to include resource conditions in relation to easements, thereby ensuring these are provided and legally established.

### *Overall evaluation of Option 2*

Option 2 is recommended.

### Risk of acting/not acting

There is sufficient information to analyse the appropriateness of acting or not acting as:

- The issue is well understood, and the recommended option provides greater alignment with the RMA, while remaining consistent with the objectives and policies of the District Plan; and
- Overall, the risk of not acting is considered to be greater than the risk of acting.

### Consultation

No consultation is required to inform a recommended option.

### Recommended Option

Following the assessment above, Option 2 is the recommended option.

### Recommended Changes

SUB-R1	Subdivision for the purpose of the construction and use of residential units in the Medium Density Residential Zone or High Density Residential Zone
Medium Density Residential Zone  High Density Residential Zone	1. Activity status: <b>Controlled</b>  Matters of control are:  (...)  <b>7. Any easements necessary.</b>
SUB-R2	Subdivision around an existing lawfully established building <b>or buildings (excluding accessory buildings) approved as part of a resource consent application that <del>which</del> does not result in the creation of any new undeveloped allotment</b>
All Zones	<b>1.</b> Activity status: <b>Permitted</b>  Where:  <b>a.</b> The subdivision is not located in the General Rural Zone, the Large Lot Residential Zone or the Future Urban Zone; and  <b>b.</b> Compliance with the following standards is achieved:  i. SUB-S1; ii. SUB-S2; iii. SUB-S3; iv. SUB-S4; v. SUB-S5; and vi. SUB-S7; and  <b>c.</b> The subdivision will not increase the degree of non-compliance with land use standards of the applicable Zone; <b>and</b>  <b>d. No new easements are required.</b>
<u>All Zones</u>	<b>2.</b> Activity status: <b>Controlled</b>  <u>Where:</u>  <b>a. Compliance with SUB-R1.a to SUB-R1.c is achieved; and</b> <b>b. Compliance with SUB-R1.d is not achieved.</b>

	<p><u>Matters of control are:</u></p> <ol style="list-style-type: none"> <li><u>Any easements necessary.</u></li> </ol>
All Zones	<p><del>2.</del> <b>3.</b> Activity status: <b>Restricted Discretionary</b></p> <p>Where:</p> <ol style="list-style-type: none"> <li>Compliance with any of the requirements of <u>SUB-R2.1b</u> is not achieved.</li> </ol> <p>Matters of discretion are:</p> <ol style="list-style-type: none"> <li>The matters in SUB-P1, SUB-P3, SUB-P4, SUB-P5, SUB-P8; and SUB-P9;</li> <li>The extent and effect of non-compliance with any relevant Standard as specified in the associated assessment criteria for the infringed standards;</li> <li>Site access and the design of any vehicle parking and associated manoeuvring areas proposed-; <u>and</u></li> <li><u>Any easements necessary.</u></li> </ol>
All Zones	<p><del>3.</del> <b>4.</b> Activity Status: <b>Discretionary</b></p> <p>Where:</p> <ol style="list-style-type: none"> <li>Compliance with the requirements of SUB-R2.1.a or SUB-R2.1.c is not achieved.</li> </ol>
<b>SUB-R3</b>	<b>Boundary adjustments</b>
	<ol style="list-style-type: none"> <li>Activity status: <b>Controlled</b></li> </ol> <p>Matters of control are:</p> <p>(...)</p> <p><u>5. Any easements necessary.</u></p> <ol style="list-style-type: none"> <li>Activity status: <b>Restricted Discretionary</b></li> </ol> <p>Matters of discretion are:</p> <p>(...)</p> <p><u>7. Any easements necessary.</u></p>
<b>SUB-R4</b>	<b>Subdivision to create a new allotment for infrastructure</b>
	<ol style="list-style-type: none"> <li>Activity status: <b>Controlled</b></li> </ol> <p>Matters of control are:</p> <p>(...)</p> <p><u>3. Any easements necessary.</u></p> <ol style="list-style-type: none"> <li>Activity status: <b>Restricted Discretionary</b></li> </ol> <p>Matters of discretion are:</p> <p>(...)</p> <p><u>4. Any easements necessary.</u></p>

SUB-R5	Subdivision that creates any vacant allotment, excluding new allotments for infrastructure
	<p>1. Activity status: <b>Controlled</b></p> <p>Matters of control are:</p> <p>(...)</p> <p><u>3. Any easements necessary.</u></p> <p>2. Activity status: <b>Restricted Discretionary</b></p> <p>Matters of discretion are:</p> <p>(...)</p> <p><u>7. Any easements necessary.</u></p> <p>3. Activity status: <b>Restricted Discretionary</b></p> <p>Matters of discretion are:</p> <p>(...)</p> <p><u>4. Any easements necessary.</u></p>
<b>Consequential Amendments</b>	
No consequential changes are needed.	