



Transferable development rights

Quid pro quo subdivisions

By Michelle Igasan*

A Transferable Development Right (TDR) can be an innovative and effective means of undertaking a rural subdivision where otherwise it might be prohibited under a local district plan.

A TDR could be bought and sold between landowners, enabling the purchaser of the TDR to subdivide (subject to the usual subdivision rules) where previously they would have been barred from doing so.

The ability to create, implement and effectively manage all aspects of the TDR process is derived through provisions in the Resource Management Act 1991, which delegates power to territorial authorities to make their own laws regarding how land should be developed and managed.

TDR subdivision rules apply only to rural zonings and it is worth emphasising that rules will differ between territorial authorities, depending on the future planning objective for the relevant region. It is important to check from the outset what those rules are and what limitations, if any, are imposed.

It is also worth noting that some councils do not embrace the concept of TDRs at all. For example, Tauranga City Council's District Plan currently does not provide for, or reference the use of TDRs.

On the other hand, the Western Bay of Plenty District Council (WBOPDC) district plan does include the use of TDRs to specific tracts of land within its district. →



For example, the Minden Lifestyle Zone rural subdivision rules recently underwent a rewrite, providing landowners in the Lifestyle Zone who were previously prevented from subdividing their land, with an opportunity to be able to do so by means of purchasing a TDR from the Rural Zone.

The objective behind WBOPDC plan change is effectively to allow for more intensive residential subdivision of land within the Minden Lifestyle Zone in order to cater to a growing population, thereby unlocking subdivision potential in this area (any subdivision consent remains at the discretion of WBOPDC with consideration weighted on whether appropriate infrastructure is in place to support any division of land).

Generally, those landowners in the Western Bay of Plenty that have “ecological environmental features” on their land will be in a position to sell a TDR, which can fetch upwards of \$25,000. Ecological environmental features refer to such things as wetlands (over half a hectare), native bush (variable of forest type 3-5 ha), enhancement planting (the process of additional planting in an area, thereby increasing that area’s forested land or wetland), or stream margins that can be

planted, making a TDR a hot commodity if you are the holder of this right.

Another feature of a TDR is that it can also be extremely useful in a situation where two houses are sited on the one rural lot. In the Minden Lifestyle Zone example at least, a subdivision utilising a TDR might be possible using this method.

District plans are crucial to managing and consequently preserving land from mass subdivision of rural-zoned land. Importantly, there is a growing awareness on preservation and protection of the environment with respect to tracts of land held in private holdings (as distinguished from public land, which is already protected by application of the Resource Management Act).

While this form of quid pro quo arrangement is beneficial to those selling and buying TDRs, if you are considering creating a TDR, be prepared for the cost expenditure associated with consultants’ reports and ultimately approval from council. While this may seem like a straightforward process, there are a number of criteria to achieve, including the fact that if the district plan rules change in the future, a TDR may no longer be a viable method to subdivide. ■



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