MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Determination 2016/022

Regarding the authority's proposed exercise of its powers of decision to refuse to grant a certificate under section 224(f) of the Resource Management Act in respect of a Unit Title Development at 95-99 Weraroa Road, Waverley

Summary

This determination considers the requirements under section 116A with respect to fire rating of an inter-tenancy wall in relation to a certificate under section 224(f) of the Resource Management Act. The determination discusses the relationship between the Building Act, the Resource Management Act and the Unit Titles Act in respect of unit title developments and subdivision.

1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004[1] made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment ("the Ministry"), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to the determination are:

- the applicant, Wav 77 Limited ("the applicant"), who is one of the owners of the building, acting through a director of the company
- the other owner of the building, Spads Associates Limited ("the other owner")[2]
- South Taranaki District Council ("the authority"), carrying out its duties as a territorial authority or building consent authority.

1.3 This determination arises from the authority's decision to issue a resource consent under the *Resource Management Act 1991* subject to a condition in relation to section 116A of the Building Act requiring upgrading of the fire rating of an inter-tenancy wall.

1.4 In its initial submission (refer paragraph 3.2) the authority advised that it had not received an application for a certificate under section 224(f) of the Resource Management Act, but that the applicant had been issued a resource consent to undertake the proposed subdivision, and that one of the consent conditions required an inter-tenancy wall be fire rated to comply with the Building Code. This condition

[1] The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.building.govt.nz or by contacting the Ministry on 0800 242 243.
[2] The application was initially made on behalf of both owners, however no confirmation was received that Wav 77 was acting as an agent for Spads Associates in this matter. Accordingly Spads Associates have been included as a party under section 176 of the Act.

was included on the advice of an officer of the authority and in respect of compliance with section[3] 116A of the Building Act.

1.5 The matter to be determined[4] is therefore the authority's proposed exercise of its powers of decision to refuse to grant a certificate under section 224(f) of the Resource Management Act 1991, as the authority has clearly indicated to the applicant that it will refuse to grant the certificate if the inter-tenancy wall is not brought into compliance with section 116A of the Building Act.

1.6 In this determination, I have referred to the following legislation, the relevant parts of which are included in full in the Appendix:

- The Building Act 2004 ("the Act")
- The Resource Management Act 1991 ("the RMA")
- The Unit Titles Act 2010 ("the UTA").

1.7 In making my decision, I have considered the submissions of the parties and the other evidence in this matter.

1.8 Matters outside this determination

1.8.1 I note that the dispute involves issues related to the RMA and the UTA and the relationship between these and the Act. While section 177(3)(f) provides for a determination on any power of decision of a territorial authority in respect of a certificate under section 224(f) of the RMA, I have no jurisdiction under other enactments and this determination considers only matters relating to the Act and its regulations. I have however included comment on the relationship between the legislation to provide context to the analysis and decision.

2. The background

2.1 The property consists of an area of 2006m^2 that fronts Weraroa Road in an area of mixed residential, commercial and industrial use. The applicant and the other owner operate separate businesses, and use Lot 1 DP 14953 as a common area. The property is occupied by a petrol station, including a shop, office space, and bathroom facilities, and an automotive workshop. The existing building, which appears to have been altered and expanded over time, is constructed on Lot 1 DP 11164; and Lot 1 DP 14953 is a common area – see figure 1 next page.

2.2 The ownership of the property is currently as follows:

	Lot 1 DP 14953 (WN567/98)	**Lot 1 DP 11164** (WN455/137)	**Part section 325 Okutuku District** (WN951/59)
Applicant	½ share	½ share	Full share
Other owner	½ share	½ share	-
Current use	Common area	Existing buildings utilised by two separate businesses	Existing buildings (see Fig 1)
Area	195 sq m	1008 sq m	750 sq m

3 In this determination, unless otherwise stated references to sections are to sections of the Act, and references to clauses are to clauses of the Building Code.

4 Under sections 177(1)(b) and 177(3)(f)

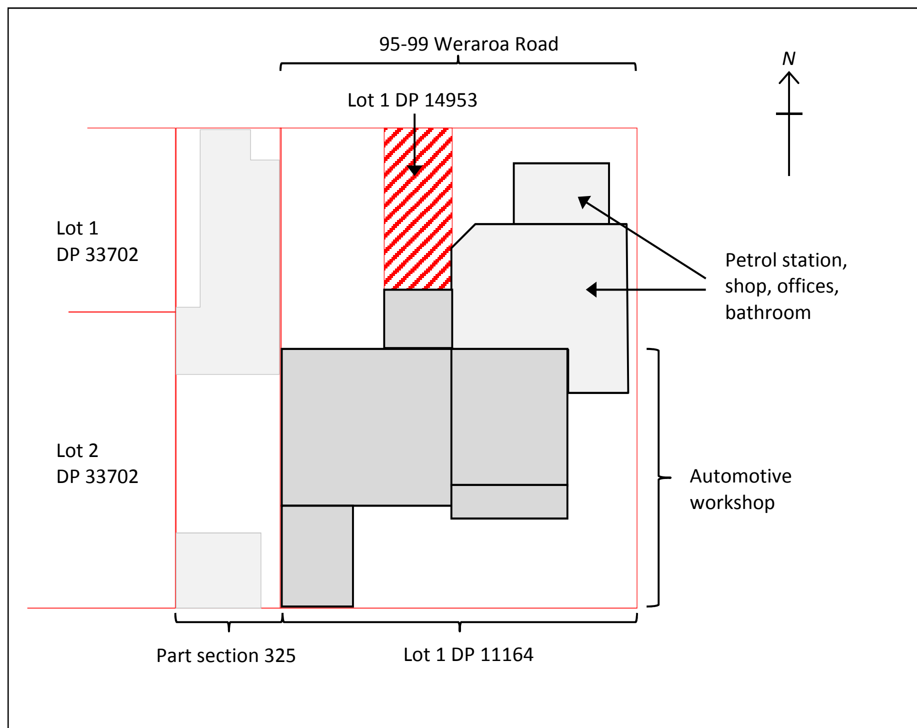

Figure 1: Site plan (not to scale)

2.3 On 6 August 2013, the applicant engaged a building surveyor to assist in creating unit titles in order that the two businesses currently operating from the site would own separate areas of the property (see figure 2 below). The building surveyor advised the applicant to apply for resource consent.

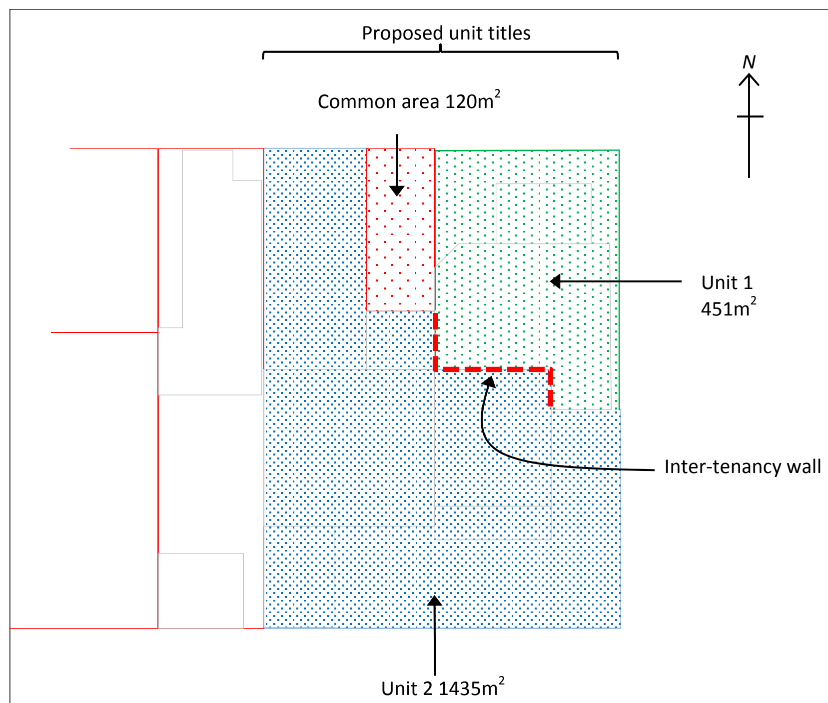

Figure 2: Site plan showing proposed unit titles (not to scale) based on the "subdivision consent report"

2.4 A planning officer of the authority produced a "Subdivision consent report" dated 14 March 2014, noting

> The applicant wishes to subdivide the properties at 95-99 Weraroa Road, (SH 3) Waverley into two unit titles with a common area. Essentially the subdivision would separate the … Service Station business (including the shop, office and bathroom facilities) from the remainder of the property. The unit titles would share a common area which is used for access and parking with the underground petrol tanks being located below.

2.5 Under a heading "Building Act Requirements", the report referred to the requirements under section 116A and that 'the subdivision creates two titles that share multiple common walls'. The report noted

> To ensure compliance with the building code, a condition would be placed on the consent that requires all common boundaries with inter-tenancy walls to have a commercial fire resistance with 180 minutes (minimum) protection. If new inter-tenancy walls are required, then a building consent is also necessary. This would be provided as an Advice Note on the consent.

2.6 The subdivision consent report concluded with the recommendation that resource consent be granted to subdivide the property subject to a number of conditions, including:

> 4. That under Section 116A of the Building Act [2004], all common boundaries with inter-tenancy walls must demonstrate compliance with commercial fire resistance for a minimum of 180 minutes.

The advice notes also included:

> 2. If for the purpose of Condition 4, new inter-tenancy walls are required, then a building consent would be necessary and advice should be sought from the [authority's] Building Control Team.

2.7 On 20 May 2014 the applicant sought assistance on the matter from his local Member of Parliament, whose office then sought advice from the Ministry. On 27 May 2014 an officer of the Ministry responded, noting that the matter may relate to the requirements under section 116A and that 'where a subdivision affects a building and includes requirements in respect of the protection of "other property" … if a building is split into separate titles then they must be considered as "other property" …'. The officer suggested the applicant ask the authority to identify the requirement in legislation that it was invoking.

2.8 On 1 June 2014 the applicant again wrote to the Member of Parliament, stating that the condition included was invoked under section 116A of the Act and that the applicant did not understand why a fire rated wall was required. That query was put to the officer of the Ministry, who responded on 16 June 2014 and noted that section 116A required the upgrade of the building 'as nearly as reasonably practicable' in respect of fire safety because the unit title meant the property was split in terms of ownership and that it had the effect of creating an "other property". The officer of the Ministry noted what would be required to meet the requirements of section 116A was for the owner to propose to the authority for its consideration.

2.9 Further correspondence ensued from the applicant to the office of the Member of Parliament, with the applicant noting in an email on 29 June 2014 that under 'part two of the unit title act … [the authority] does not come into it. I, as the owner of a *(sic)* estate in fee simple, need only to deposit my unit title plan with LINZ[5].'

2.10 In an email to the applicant on 10 September 2014, the building surveyor stated:

> The first requirement for us, as part of the Unit Title Act, is that all of the underlying land is put into one certificate of title. Currently the land for your unit title plan is in three certificates of title [part section 325/DP14953/DP11164], and so this needs to first be combined as one.
>
> The western portion [part section 325] was created by a 'diagram on transfer' … Therefore we need to peg this boundary and then draw a plan of your land as a single lot to allow the one certificate of title to be created.
>
> The second requirement for us, as part of the Unit Title Act, is the unit title plan showing two Principal Units and the Common Area. This is the plan submitted to Land Information New Zealand. …
>
> The final unit title plan will be based on … the plan provided by you, and survey field measurements to confirm the relationship of building and legal property boundaries.

(I note that from the email above it would appear that part section 325 is intended to be included in the proposed unit titles, however, that does not appear to be the case for the site plan included in the subdivision consent report – refer paragraph 2.3).

2.11 In an email to the applicant on 10 October 2014 the authority advised that, with respect to condition 4, under section 116A 'all common boundaries with inter-tenancy walls must demonstrate compliance with commercial fire resistance for a minimum of 180 minutes'. The authority stated its understanding that the provision applied in respect of both protection of other property and means of escape from fire. It also noted that the unit title subdivision meant that there were now separate titles and ownership, and that the building may already comply; the authority advised it would confirm the legislative requirements with the Ministry.

2.12 On 23 October 2014 the authority emailed the applicant, noting that it had discussed the application of section 116A with an officer of the Ministry and the authority confirmed the condition would remain on the resource consent.

2.13 On 4 March 2015 the authority wrote to the applicant in response to the applicant's concerns. The authority stated it was satisfied the proposed subdivision 'would not make any other provisions of the building code any less compliant than they were before'; however, it was not satisfied in respect of protection of other property (116A(a)(iii)). The authority also provided a copy of an extract from the Acceptable Solution C/AS5, part 5 – Control of external fire spread.

2.14 The Ministry received an application for determination on 12 October 2015.

2.15 On 6 November 2015 I advised the parties that the application for determination was accepted on the basis that it was a determinable matter under sections 177(1)(b) and 177(3)(h). In order to assist the parties I set out my understanding of the interplay between the legislation involved. I suggested the applicant seek legal advice, and also requested the authority confirm whether it had turned its mind to all of the relevant applicable Building Code provisions and whether it was only the C Clauses that were in dispute.

[5] Land Information New Zealand

2.16 In a letter to the applicant on 11 January 2016, I advised that the applicant's requests regarding a ruling on the UTA was not a matter that falls within section 177 of the Act, and that the matter would be limited to section 116A of the Act in regards to section 224(f) of the RMA. In a further letter of 1 February 2016 confirming this approach, I noted that some commentary on the relationship between the various applicable legislation may be included in the analysis and again suggested the applicant seek legal advice.

3. The submissions

3.1 The applicant

3.1.1 The applicant provided a written submission dated 5 October 2015 with their application for determination. In summary the applicant submitted:

- The authority has misunderstood the UTA; fire separation is not a requirement under the UTA.
- The reference to a "subdivision" in section 5(2) of the UTA is not the same as the interpretation the authority are using.
- The conditions applied to the resource consent by the authority are not based on a unit title development but rather on subdivision of the underlying land and separation of the infrastructure; this is not possible when both ownership parties remain managers and owners of the property and joint owners of a common area within the property.
- The unit title development is not the subdivision of the underlying land, therefore the building conditions are not a requirement of the [UTA].
- The use of resource consent to apply building conditions contradicts the purpose of the UTA. The requirements for resource consent are defined in the UTA.

3.1.2 In regards to ownership, the applicant noted:

> The property in question is already subdivided into joint ownership by title. … there is no proposed change to ownership, change of use and there are not alterations required.
>
> The property in question is owned by two companies, subdivided into half shares on two of the titles. Each owner owns their own areas of the building and share a common area. The areas presently owned will be the same areas unit titles will be created under the proposed unit title development. The area currently shared will remain a common area.
>
> … The two companies share the property as tenants in common.
>
> The property we own is in three titles, amalgamated into one rateable property over 50 years ago.

3.1.3 The applicant also provided copies of the following:

- The authority's subdivision consent report dated 14 March 2014.
- The three certificates of title.
- Relevant correspondence between the parties.
- Form 28 of the Unit Titles Regulations 2011 – Certificate by territorial authority: deposit of unit plan.

3.1.4 By email on 15 November 2015 the applicant confirmed the determination application was in respect of the condition applied to the resource consent and reiterated his interpretation and that there was no "subdivision" as the ownership was shared.

3.1.5 In an email on 6 December 2015, in response to correspondence from the Ministry, the applicant stated his view that

> A subdivision under s 218(1)(a)(v) [of the RMA] is not a unit title development. The purpose of the Unit Title Act is to provide a legal framework for joint ownership in stratum estate, in one certificate of title. This could come under s 218(3)(a).
>
> The legal title that is created in the units is a different estate from the legal title to the underlying land on which the development is built.

The applicant attached copies of sections of various legislation as follows:

- Unit Titles Act 2010:
  - s3 – Purpose
  - s18 – Stratum estate created in unit
  - s32 – Restrictions on deposit of unit plans
  - s35 – Grounds for authorised officer's refusal to give certificate
- Resource Management Act 1991: s408 – Existing approvals for unit plans, cross lease plans, and company lease plans
- Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002: s11 – Creation of computer unit title registers
- Rating Valuations Act 1998: s5A – meaning of certificate of title.

3.1.6 In a further submission dated 25 January 2016, the applicant confirmed the ownership, noting that:

> The unit title development has been done in accordance with the [UTA] part 2 subpart 1. … Part 1.4 – Overview (vi) states that the legal titles that are created in the units is a different estate from the legal title to the underlying land on which the development is built.
>
> We will own units within the one title in stratum estate. … [the authority] applied [section 116A] because they say this is a subdivision. A subdivision is defined in the Building Act. I am asking, is the [UTA] a subdivision as defined in the building act?
>
> … On the deposit of a unit title plan, the unit title development will be created in one computer register in the names of the register (sic) proprietors, is it a subdivision? This is a legal framework for joint ownership, we already have a type of joint ownership as the registered proprietors of the property as tenants in common.
>
> … An application for a subdivision was not applied for from [the authority], the write (sic) to deposit a unit plan development was, the act outlays [the authority's] involvement as this is a legal framework to create a unit title development.

3.2 The authority

3.2.1 On 24 November 2015 the authority provided a written submission in response to the application for determination. I have summarised that submission below:

- No application for a section 224(f) certificate has been made and so the authority has made no assessment in terms of compliance with the Building Code provisions.

- The authority has issued a resource consent subject to a number of conditions, one of which requires the inter-tenancy wall 'achieve a degree of fire rating aimed at preventing the spread of fire between two buildings that would be held in separate ownership following the unit title subdivision'.
- When considering the issue of the resource consent the authority's internal advice was that the condition regarding fire rating was required, based on the requirement under section 166A to comply with the C Clauses of the Building Code.
- The authority is satisfied that the fire-rating of the inter-tenancy wall is the only work required to achieve the necessary level of compliance with the Building Act.

3.2.2 The authority advised that the application for resource consent did not include any information relating to any level of existing fire rating and the authority's records do not provide any further clarification. The authority believes the building is steel portal framed, and the intertenancy wall separating the service station from another automotive business, is estimated to have a clear height in excess of four meters. It is the authority's view that some upgrading work would be required, however if the existing wall has a fire resistance rating of 180 minutes, the applicant would only need to provide the information demonstrating this as part of the application for approval under section 224(f).

3.2.3 In regards to compliance 'as nearly as reasonably practicable' the authority stated it was not aware of any factors that would restrict the applicant's ability to achieve the specified level of fire protection.

3.3 The draft determination and submissions in response

3.3.1 A draft determination was issued to the parties for comment on 24 February 2016.

3.3.2 In responses received on 29 February and 3 March 2016 respectively, the authority and the other owner indicated they accepted the draft without further comment.

3.3.3 The applicant sought a number of extensions to the time period in which to respond to the draft. The applicant's response was received on 2 June 2016 which reiterated the views expressed in earlier submissions. The applicant advised that the Unit Plan was lodged with the authority in September 2013, and on 20 March 2014 'the plan was approved with 180 minute firewall and separate water connections'. The applicant did not apply for a resource consent, and submitted that this was 'not a subdivision of land' as the unit titles are a 'different estate from the legal title to the underlying land'. The applicant made reference to the requirements of the RMA and the UTA. In regards to the description of the lots in paragraph 4.2, the applicant advised: 'buildings were built over 3 titles; 325 is a large workshop that covers Lot DP11164 too'.

4. Discussion

4.1 The three key pieces of legislation involved in this dispute have different purposes;

- the UTA provides a legal framework for the ownership and management of land and associated buildings and facilities,
- the RMA concerns the use and development of land, and
- the Act sets the performance standards for buildings to ensure the safety and well-being of people using buildings.

4.2 In this case the property at 95-99 Weraroa Road consists of two Lots (Lot 1 DP 14953 and Lot 1 DP 11164) and the ownership of those two lots was held in equal shares by two companies as tenants in common. It is my understanding that the property at 105 Weraroa Road (part section 365) is solely owned by the applicant, and based on the subdivision consent report the unit title development is in respect of the property at 95-99 Weraroa Road only and does not include the property at 105 Weraroa Road.

4.3 With the unit title development, the companies will no longer be tenants in common; the property will be divided into three, and each company will own its own property plus a share in the common area. The applicant holds the view that the act of creating a unit title development under the UTA does not constitute a subdivision for the purpose of section 224(f) of the RMA and accordingly section 116A of the Act does not apply.

4.4 The RMA contains a number of restrictions on subdividing land, and these are primarily set out in section 11 of the RMA. One of the restrictions in section 11 requires a subdivision to be shown on a survey plan deposited under Part 10 of the RMA by the Registrar-General of Land. Section 224 sets out certain requirements that must be satisfied before such a survey plan may be deposited, and paragraph (f) requires a territorial authority to be satisfied that if the subdivision is to be effected by a unit plan then every building to which the unit plan relates must comply with section 116A of the Act. It is the proposed refusal by the authority under section 224(f) of the RMA to issue a certificate, that it is satisfied that section 116A of the Act will be complied with, that is at issue in this Determination.

4.5 It is useful to carefully go through the relevant provisions of the RMA as the provisions are lengthy and complex, and it is their very application or otherwise that this Determination must consider.

4.6 The relevant parts of section 11 of the RMA provide:

11 Restrictions on subdivision of land

(1) No person may subdivide land, within the meaning of section 218, unless the subdivision is—

(a) both, first, expressly allowed by a national environmental standard, a rule in a district plan as well as a rule in a proposed district plan for the same district (if there is one), or a resource consent and, second, shown on one of the following:

…

(iii) a survey plan, as defined in paragraph (b) of the definition of survey plan in section 2(1), deposited under Part 10 by the Registrar-General of Land; …

4.7 It is necessary to further consider the definitions of the terms “subdivide land”, “unit plan” and “survey plan” in order to determine whether section 11 applies to the UTA proposal in respect of 95-99 Weraroa Rd:

- Section 218(1)(v) of the RMA provides that “subdivide land” means “the division of an allotment … by the deposit of a unit plan”.
- A “unit plan” is defined in section 2(1) of the RMA in the following way: “unit plan has the same meaning as in section 5(1) of the Unit Titles Act 2010”.
- “Unit plan” is defined in section 5(1) of the UTA as “a plan that has been or is intended to be deposited under the Land Transfer Act 1952 in accordance with this Act, and includes a proposed unit development plan: a stage unit plan: a complete unit plan: a unit plan amended in accordance with this Act: a plan that has been or is intended to be deposited in substitution for an existing unit plan”.
- Paragraph (b)(i) of the definition of “survey plan” in section 2(1) of the RMA states that “survey plan includes … a unit plan”.

4.8 From a reading of section 11 of the RMA and the above definitions, the following can be concluded:

- the division of an allotment by the deposit of a unit plan is treated as a subdivision under the RMA (as per the definition of subdivision in section 218(1)(v)), and
- a subdivision must be shown on a survey plan or unit plan deposited under Part 10 of the RMA by the Registrar-General of Land (as required by section 11(1)(a)(iii)).

4.9 Under section 226 of the RMA the Registrar-General of Land may not issue a certificate of title for land shown as a separate allotment on a survey plan or unit plan unless satisfied the requirements of section 224 of the RMA have been complied with. The relevant part of section 226 provides:

226 Restrictions upon issue of certificates of title for subdivision

(1) The Registrar-General of Land shall not issue a certificate of title for any land that is shown as a separate allotment on a survey plan (being a certificate issued to give effect to the subdivision shown on that survey plan), unless he or she is satisfied, after due inquiry, that—

(a) the plan has been deposited in accordance with section 224 …

4.10 Section 224(f) of the RMA sets out a particular requirement for a survey plan that is to be effected by a unit plan. The relevant parts of section 224(f) provide:

224 Restrictions upon deposit of survey plan

No survey plan shall be deposited for the purposes of section 11(1)(a)(i) or (iii) unless—

…

(f) In the case of a subdivision of land to be effected … by the deposit of a unit plan, the territorial authority is satisfied on reasonable grounds that every existing building or part of an existing building (including any building or part thereof under construction) to which the … unit title plan relates complies with or will comply with the provisions of the building code described in section 116A of the Building Act 2004, and a certificate signed by a person authorised by the territorial authority to sign such certificates is lodged with the Registrar-General of Land;

4.11 The effect of section 224(f) of the RMA is that a unit plan cannot be deposited under Part 10 of the RMA by the Registrar-General of Land for the purpose of effecting a subdivision under the RMA, unless the Registrar-General of Land has received from the territorial authority the necessary certificate under section 224(f) of the RMA that section 116A of the Act has been or will be complied with.

4.12 The relevant parts of section 116A of the Act provide the authority must not issue such a certificate unless it is satisfied on reasonable grounds that the building(s)

> (a) will comply, as nearly as is reasonably practicable, with every provision of the building code that relates to the following matters:
>
> (i) means of escape from fire:
>
> …
>
> (iii) protection of other property; …

4.13 The provisions discussed above apply to 95-99 Weraroa Road in the following way. The fee simple estate for 95-99 Weraroa Road is to be the subject of a unit plan under the UTA. Under the provisions of the RMA, that unit plan is treated as a subdivision under the RMA. It is important to note this Determination is not about the application of the UTA as I have no jurisdiction to make a determination in respect of the UTA. However, because the RMA provides that some types of title change are a subdivision, such as a unit plan under the UTA, the RMA brings a unit plan within the RMA subdivision process.

4.14 I understand the applicant's submission that the RMA should not apply as the owners of 95-99 Weraroa Road are not changing and only a unit plan is being proposed under the UTA. However, the applicant's proposal under the UTA will trigger the subdivision requirements of the RMA because one type of ownership (fee simple estate) is being exchanged for another (stratum estate in freehold and common property under the UTA) and I am required to apply the subdivision rules, as set out in the RMA, to that proposed change in the legal status of the land and buildings at 95-99 Weraroa Road.

4.15 Under the RMA, the proposed subdivision of 95-99 Weraroa Road is required to be shown in a survey plan deposited under Part 10 of the RMA by the Registrar-General of Land. A survey plan is defined to include a unit plan, so the proposed unit plan can be deposited under Part 10 of the RMA by the Registrar-General of Land. It is this deposit of the proposed unit plan that will trigger the application of section 224(f) of the RMA, and requires the existing buildings to comply with the requirements of section 116A of the Act.

4.16 Section 116A of the Act requires the authority to satisfy itself that the boundary wall of the proposed principal units (the inter-tenancy wall as shown in the subdivision consent report) will comply as nearly as is reasonably practicable with the provisions of the Building Code relating to means of escape from fire, and the protection of other property. The authority says it has not conducted a full analysis of the requirements of section 116A as it has not received an application for a section 224(f) certificate. However, the authority appears to have formed the view that the fire-rating of the inter-tenancy wall is the only work that is likely to be required by section 116A of the Act.

4.17 The extent of the compliance or non-compliance of the existing building with the requirements of section 116A of the Act is unclear. The existing building may already comply with the provisions of the Building Code relating to means of escape and the protection of other property, it may comply with those provisions as nearly as

is reasonably practicable, or further work may be required to ensure that it complies as nearly as is reasonably practicable with those provisions.

4.18 The applicant should engage an appropriately qualified building surveyor, or fire engineer, to advise the nature and extent of building work, if any, that will be required to satisfy the requirements of section 116A of the Act. That advice can then be put to the authority at the appropriate time along with a request for a section 224(f) certificate. Any further disputes between the applicant and the authority regarding the section 224(f) certificate can, if necessary, be the subject of another application for a determination.

5. The decision

5.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the authority proposed to correctly exercise its powers under section 224(f) of the RMA in respect of the refusal to grant a certificate under that provision unless the inter-tenancy wall complied with the requirements of section 116A of the Act.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 1 July 2016.

John Gardiner
Manager Determinations and Assurance

Appendix A

A.1 The relevant sections of the Building Act 2004

Purpose and principles

3 Purposes

This Act has the following purposes:

(a) to provide for the regulation of building work, …, and the setting of performance standards for buildings to ensure that—

(i) people who use buildings can do so safely and without endangering their health; and

…

(iii) people who use a building can escape from the building if it is on fire; and

…

(b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.

116A Code compliance requirements: subdivision

A territorial authority must not issue a certificate under section 224(f) of the Resource Management Act 1991 for the purpose of giving effect to a subdivision affecting a building or part of a building unless satisfied, on reasonable grounds, that the building—

(a) will comply, as nearly as is reasonably practicable, with every provision of the building code that relates to the following matters:

(i) means of escape from fire:

…

(iii) protection of other property; and

(b) will,—

(i) if it complied with the other provisions of the building code immediately before the application for a subdivision was made, continue to comply with those provisions; or

(ii) if it did not comply with the other provisions of the building code immediately before the application for a subdivision was made, continue to comply at least to the same extent as it did then comply.

A.2 The relevant sections of the Resource Management Act 1991

Interpretation and application

2 Interpretation

(1) In this Act, unless the context otherwise requires,—

subdivision consent has the meaning set out in section 87(b)

subdivision of land and ***subdivide land*** have the meanings set out in section 218

survey plan has the meaning set out in the following paragraphs, in which *cadastral survey dataset* has the same meaning as in section 4 of the Cadastral Survey Act 2002:

(a) *survey plan* means—

(i) a cadastral survey dataset of subdivision of land, or a building or part of a building, prepared in a form suitable for deposit under the Land Transfer Act 1952; and

(ii) a cadastral survey dataset of a subdivision by or on behalf of a Minister of the Crown of land not subject to the Land Transfer Act 1952:

(b) *survey plan* includes—

(i) a unit plan; and

(ii) a cadastral survey dataset to give effect to the grant of a cross lease or company lease

11 Restrictions on subdivision of land

(1) No person may subdivide land, within the meaning of section 218, unless the subdivision is—

(a) both, first, expressly allowed by a national environmental standard, a rule in a district plan as well as a rule in a proposed district plan for the same district (if there is one), or a resource consent and, second, shown on one of the following:

(i) a survey plan, as defined in paragraph (a)(i) of the definition of survey plan in section 2(1), deposited under Part 10 by the Registrar-General of Land; or

…

(iii) a survey plan, as defined in paragraph (b) of the definition of survey plan in section 2(1), deposited under Part 10 by the Registrar-General of Land; …

Part 10

Subdivisions and reclamations

218 Meaning of subdivision of land

(1) In this Act, the term *subdivision of land* means—

(a) the division of an allotment—

(i) by an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of the allotment; or

…

(v) by the deposit of a unit plan, or an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of a unit on a unit plan; or

(b) an application to the Registrar-General of Land for the issue of a separate certificate of title in circumstances where the issue of that certificate of title is prohibited by section 226,—

and the term *subdivide land* has a corresponding meaning.

(2) In this Act, the term *allotment* means—

(a) any parcel of land under the Land Transfer Act 1952 that is a continuous area and whose boundaries are shown separately on a survey plan, whether or not—

(i) the subdivision shown on the survey plan has been allowed, or subdivision approval has been granted, under another Act; or

(ii) a subdivision consent for the subdivision shown on the survey plan has been granted under this Act; or

(b) any parcel of land or building or part of a building that is shown or identified separately—

(i) on a survey plan; or

(ii) on a licence within the meaning of Part 7A of the Land Transfer Act 1952; or

(c) any unit on a unit plan; or

(d) any parcel of land not subject to the Land Transfer Act 1952.

(3) For the purposes of subsection (2), an allotment that is—

(a) subject to the Land Transfer Act 1952 and is comprised in 1 certificate of title or for which 1 certificate of title could be issued under that Act; or

(b) not subject to that Act and was acquired by its owner under 1 instrument of conveyance—
shall be deemed to be a continuous area of land notwithstanding that part of it is physically separated from any other part by a road or in any other manner whatsoever, unless the division of the allotment into such parts has been allowed by a subdivision consent granted under this Act or by a subdivisional approval under any former enactment relating to the subdivision of land.
(4) For the purposes of subsection (2), the balance of any land from which any allotment is being or has been subdivided is deemed to be an allotment.

224 Restrictions upon deposit of survey plan
No survey plan shall be deposited for the purposes of section 11(1)(a)(i) or (iii) unless—
…
(f) in the case of a subdivision of land to be effected by the grant of a cross lease or company lease, or by the deposit of a unit plan, the territorial authority is satisfied on reasonable grounds that every existing building or part of an existing building (including any building or part thereof under construction) to which the cross lease, company lease, or unit title plan relates complies with or will comply with the provisions of the building code described in section 116A of the Building Act 2004, and a certificate signed by a person authorised by the territorial authority to sign such certificates is lodged with the Registrar-General of Land;

A.3 The relevant sections of the Unit Titles Act 2010

Preliminary provisions

3 Purpose
The purpose of this Act is to provide a legal framework for the ownership and management of land and associated buildings and facilities on a socially and economically sustainable basis by communities of individual owners and, in particular,—
(a) to allow for the subdivision of land and buildings into unit title developments comprising units that are owned in stratum estate in freehold or stratum estate in leasehold or licence by unit owners, and common property that is owned by the body corporate on behalf of the unit owners; and
(b) to create bodies corporate, which comprise all unit owners in a development, to operate and manage unit title developments; and
(c) to establish a flexible and responsive regime for the governance of unit title developments; and
(d) to protect the integrity of the development as a whole.

5 Interpretation
(1) In this Act, unless the context otherwise requires,—
unit, in relation to any land, means a part of the land consisting of a space of any shape situated below, on, or above the surface of the land, or partly in one such situation and partly in another or others, all the dimensions of which are limited, and that is designed for separate ownership
unit plan means a plan that has been or is intended to be deposited under the Land Transfer Act 1952 in accordance with this Act, and includes—

(a) a proposed unit development plan:
(b) a stage unit plan:
(c) a complete unit plan:
(d) a unit plan amended in accordance with this Act:
(e) a plan that has been or is intended to be deposited in substitution for an existing unit plan

unit title development means the individual units and the common property comprising a stratum estate

(2) In this Act,—
(a) a reference to a subdivision of land means a subdivision of a parcel of land under subpart 1 of Part 2 to create a unit title development and (if it is done in stages) in accordance with subpart 3 of Part 2; and
(b) a reference to a subdivision of a principal unit means a subdivision of a principal unit and the whole accessory unit (if any) to create a subsidiary unit title development under subpart 2 of Part 2 and (if it is done in stages) in accordance with subpart 3 of Part 2.

Part 2
Unit title developments

Subpart 1—Subdivision of land to create unit title development

16 Subdivision of land to create unit title development

(1) The registered proprietor of a parcel of land of any of the following kinds may subdivide that land to create a unit title development:
(a) an estate in fee simple in a parcel of land under the Land Transfer Act 1952:
…
(2) A parcel of land referred to in subsection (1) may be subdivided into—
(a) 2 or more principal units; and
(b) the number of accessory units (if any) as the registered proprietor may wish; and
(c) so much of the land as is not comprised in any unit (in this Act referred to as *common property*).
…

17 Deposit of plan effects subdivision of land

(1) The subdivision of land to provide for units is effected by the deposit under the Land Transfer Act 1952 of a plan specifying the units in their relation to a building or buildings (if any) already erected on the land.
(2) An application to deposit the plan must be made in the prescribed form (if any) by the registered proprietor described in section 16(1).