

Planning Report

Plan Change 58 – Cross Lease Flat Plans – Primary Risk Coastal Protection Area

1.0 Introduction

- 1.1 The purpose of this report is to provide recommendations on submissions to Plan Change 58 – Cross Lease Flat Plans – Primary Risk Coastal Protection Area.
- 1.2 Plan Change 58 addresses the problem of updates to cross lease flat plans unintentionally being a prohibited activity within the Primary Risk Coastal Protection Area by way of being classed as subdivision under section 218 of the Resource Management Act.
- 1.3 For a full background to the Plan Change and the proposed provisions please refer to the Section 32 Report. For a list of the proposed provisions only, please refer to the document titled 'Summary of Recommendations – All Section 32 Reports'.
- 1.4 Any recommended amendments to rules in this report will be shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this Planning Report in blue.

2.0 Topic 1: Rule 8.3.6 (a) (ii) - Exempting particular types of subdivision from being Prohibited Activities

2.1 Background

To resolve the issue of updates to cross lease flat plans being caught as a prohibited activity, Rule 8.3.6(a)(ii) (Prohibited Activities) was amended as follows;

"Subdivision (excluding minor boundary adjustments and updates to Cross Lease Flat Plans which incorporate consented building developments) within the Primary Risk Area of the Coastal Protection Area. See Rule 8.3.5(b) for definition of minor boundary adjustment."

2.2 Submission Points

Two submission points were received in support with amendments.

- 2.2.1 Downey Survey Consultants Ltd highlight that the same logic should apply to the conversion of cross lease title to freehold titles and request this type of subdivision also gets exempted from being a prohibited activity.

2.2.2 Stratum Consultants Ltd also request that the conversion of cross lease title to freehold titles be exempted from being a prohibited activity. Further, they request an exemption for the subdivision of titles with two existing dwellings. They say such changes will have no effect on the Primary Risk Coastal Protection Area and will only result in a change of legal land tenure.

2.3 Option 1 – As Proposed – Exempt updates to cross lease plans from being a prohibited activity (subdivision) in the Primary Risk Coastal Protection Area

Benefits	<ul style="list-style-type: none"> ▪ Will allow cross lease title owners to update the flat plan to recognise consented building development work that has been carried out on site. The main benefit of this is that it retains good titles and avoids the potential for disputes arising from defective titles.
Costs	<ul style="list-style-type: none"> ▪ Conversion of cross lease to freehold is another form of subdivision which will also <u>not</u> result in an increase in risk to coastal hazards; however it is overlooked and will remain a prohibited activity.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Effective as it allows updating of cross lease flat plans for maintaining good titles and allowing the continuing redevelopment of properties. ▪ Not effective in that it still prohibits conversion of cross lease to freehold which is another form of subdivision which will not result in an increase in risk to coastal hazards. ▪ Efficient as it minimises the potential costs of disputes or difficulties associated with defective titles from not being able to update cross lease flat plans. ▪ Not efficient as it prevents landowners from being able to undertake a cross lease to freehold subdivision to change land tenure and resolve any issues with cross leasing.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – sufficient information is available.

2.4 Option 2 – As requested by submitters – also exempt the following from being a prohibited activity (subdivision) in the Primary Risk Coastal Protection Area

- **Conversion of cross lease title to freehold title**
- **Subdivision of titles with two existing dwellings**

Benefits	<ul style="list-style-type: none"> ▪ Will allow cross lease title owners to update the flat plan to recognise consented building development
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	<p>work that has been carried out on site. The main benefit of this is that it retains good titles and avoids the potential for disputes arising from defective titles.</p> <ul style="list-style-type: none"> ▪ Allows cross lease to freehold subdivision, which also will not result in an increase in risk to coastal hazards, to be excluded from being a prohibited activity.
Costs	<ul style="list-style-type: none"> ▪ Subdividing properties with two existing dwellings will result in additional landowners and may lead to access issues when trying to relocate dwellings.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Effective as it allows updating of cross lease flat plans for maintaining good titles and allowing the continuing redevelopment of properties. ▪ Effective as it allows cross lease to freehold subdivision which should not be prohibited. ▪ Not effective as allowing subdivision of properties with two dwellings will result in additional landowners and may lead to access issues when trying to relocate dwellings. ▪ Efficient as it minimises the potential costs of disputes or difficulties associated with defective titles from not being able to update cross lease flat plans. ▪ Efficient as it allows landowners to undertake cross lease to freehold subdivision to resolve any issues with cross leasing. ▪ Not efficient as allowing subdivision of properties with two dwellings may lead to access issues when trying to relocate dwellings.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – sufficient information is available.

2.5 Discussion

2.5.1 The need for this Plan Change was raised through a particular case where a landowner could not update a cross lease flat plan due to subdivision being a prohibited activity in the Primary Risk Coastal Protection Area. Submitters have since highlighted that the same issue may also apply to other forms of subdivision such as the conversion of cross lease to freehold and subdividing titles which have two or more lawfully established dwellings.

2.5.2 These other forms of subdivision were overlooked in the preparation of the Plan Change because there have been no particular cases to highlight such issues, however their consideration is in general accordance with the intent of the Plan Change to clarify what forms of subdivision are not intended to be prohibited.

2.5.3 Cross lease to freehold subdivision does not have the potential to increase the risk to coastal hazards. The conversion of cross lease to freehold does not create any new titles or increase the number of additional landowners. It simply changes land tenure.

2.5.4 The subdivision of an individual title with two dwellings will create new titles but will not lead to an increase in the number of dwellings because they are already established. The creation of new titles also does not directly increase the possibility of new additional dwellings or minor dwellings as these are non-complying in all cases anyway. This option has been considered on this basis. However, this form of subdivision will introduce additional landowners to the primary risk area which has the potential to create access issues when the time comes to relocate dwellings. For example, if a title is subdivided, the 'seaward' dwelling will not be able to relocate past the 'landward' dwelling unless the 'landward' owners agree to relocate first. This issue wouldn't exist if there was just one landowner.

2.6 Recommendation

That Rule 8.3.6 (a) (ii) is amended as follows;

"Subdivision within the Primary Risk Area of the Coastal Protection Area, excluding;

- Minor boundary adjustments - see Rule 8.3.5(b) for definition of [minor boundary adjustment](#)
- [Updates to cross lease flat plans which incorporate consented building developments](#)
- [Conversion of lots from cross lease to freehold](#)

The following submissions are therefore:

Accepted

Submission	Point Number	Name
5	1	Stratum Consultants Ltd
2	1	Downey Survey Consultants Ltd

2.7 Reasons

2.7.1 Cross lease to freehold subdivision does not have the potential to increase the risk to coastal hazards. The conversion of cross lease to freehold does not create any new titles or increase the number of additional landowners. It simply changes land tenure.

2.7.2 Subdivision of an individual title with two dwellings will introduce additional landowners to the primary risk area which has the potential to create access issues when the time comes to relocate dwellings. This issue wouldn't exist if there was just one landowner.

3.0 Plan Change 58 - Recommended Changes to the District Plan First Review

3.1 The purpose of this part of the report is to show the Proposed Plan Change in full including any recommended changes in response to the submissions and further submissions.

3.2 Recommended changes to the District Plan First Review are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this Planning Report in blue.

3.3 Amend Rule 8.3.6 (a) (ii) as follows;

"Subdivision within the Primary Risk Area of the Coastal Protection Area, excluding;

- Minor boundary adjustments - see Rule 8.3.5(b) for definition of minor boundary adjustment
- Updates to cross lease flat plans which incorporate consented building developments
- Conversion of /ots from cross lease to freehold