

Proposed Variation 1 to Plan Change 60: Rural 1 and 2 Zone Subdivision Amendments

Section 32 Evaluation Report

14 July 2018

1 Introduction

This report evaluates Proposed Variation 1 to Change 60 to the Tasman Resource Management Plan (TRMP). Before a proposed plan variation or change (the proposal) is publicly notified, the Council is required under Section 32 of the Resource Management Act to evaluate:

- whether the objectives of the proposal are the most appropriate way of achieving the purpose of the Act;
- whether the provisions in the proposal are the most appropriate way to achieve the objectives;
- identifying other reasonably practicable options for achieving the objectives; and
- identifying and assessing the efficiency and effectiveness of the proposal's achieving its objectives, including the benefits and costs of the effects of implementing the proposal, including opportunities for provision or reduction in economic growth and employment.

2 Issue and Purpose of the Variation

The issue is that due to a drafting oversight, in proposed Change 60 (C60) decisions version in the TRMP, a Rural 1 subdivision activity is an innominate or discretionary activity rather than a non-complying activity as intended, where the subdivision does not meet the minimum average lot standard of 12 ha for any subdivision of a parent site existing on or before 30 January 2016.

The policy intention in the development of proposed C60 was that there be one opportunity for Rural 1 subdivision as a restricted discretionary subdivision where the (operative) 12 hectare minimum lot size is not met, but the (proposed) minimum average lot size of 12 ha is met, on any parent site existing before 30 January 2016. But where either of these conditions cannot be met, the policy intention of C60 was that the subdivision fall to non-complying. The rules affected are 16.3.5.3A, 16.3.5.4A and 16.3.5.5A.

The purpose of the variation is to achieve a consistent consent status for certain subdivision activity as with other subdivision, as there is a contribution from that particular form of subdivision to cumulative risks already managed under the TRMP's planning framework. This effectively operative planning framework provides the policy intention for and means of addressing cumulative risks from Rural 1 subdivision. So the variation is simply to correct a specific inconsistency within this framework.

The amendments required to give consistent effect to the policy intention for further Rural 1 subdivision in the TRMP will potentially reduce the subdivision opportunity for a Rural 1 landowner through a shift from discretionary subdivision for proposals not meeting an average lot net area of 12 ha on an existing lot, to the more stringent activity status of non-complying.

There is a secondary issue in that the sets of conditions applying in Rules 16.3.5.1 (Rural 1 controlled subdivision), 16.3.5.3A (Rural 1 restricted discretionary subdivision) and Rule 16.3.5.4A (Rural 1 discretionary subdivision) are not correctly displaying so that each set of conditions follows from the previous set. There is also a need to technically amend the way in which certain subdivision sites exempted from the requirement to be existing as at 31 January 2016, are described. The current description is not a complete description of all non-RMA types of title creation.

3 Scope of Evaluation

As the variation is an amending proposal, under section 32 RMA, the evaluation has to assess whether:

- a. the purpose of the variation is the most appropriate way to achieve sustainable resource management;
- b. the amendments in the variation are the most appropriate way to achieve the purpose of the variation **and** the relevant objectives currently in the TRMP.

The appropriateness of the variation can be shown by assessing other reasonably practicable amendments, and the effectiveness and efficiency of the amendments proposed (relative to other provisions) to achieve the purpose of the variation and relevant TRMP objectives.

Proposed C 60 has already been evaluated through its development to date, and so the question of appropriateness of the variation does not have to evaluate the present planning framework in chapter 7 and in 16.3 subdivision rules.

The scope of the variation's key effects to be evaluated, is limited to the effects of the change in subdivision status from discretionary to non-complying in Rural 1 Zone where:

- Any average of the net areas of lots in a Rural 1 subdivision is less than 12 ha; or
- The smallest lot in a Rural 1 subdivision is less than 5000 square metres; or
- The parent lot to be subdivided was not in existence on or before 31 January 2016.

There is a secondary purpose and effect of corrections to displays of rules and of a technical amendment to the description of how a type of subdivision exempted from the requirement to be existing as at 31 January 2016. The effects are avoidance of administrative risks including unintended restrictions.

4 Evaluation of Variation Purpose

The main purpose of the variation is to provide for a consistent activity status for Rural 1 subdivision in circumstances where the TRMP already imposes that status on other Rural 1 subdivision, essentially because of those activities' cumulative risks to productive opportunity in that zone. This specific, instrumental purpose therefore is to achieve a more complete or effective extent of management of such risks by stringent regulation of Rural 1 subdivision including small lot subdivision. The nature and significance of these risks, and the appropriateness of non-complying subdivision already regulated in the TRMP for some circumstances of Rural 1 subdivision, are not relevant to the evaluation of the variation's purpose.

To evaluate the purpose of the variation as being appropriate, requires finding that without the variation, there is less than adequate or complete regulation of the forms of Rural 1 subdivision that contribute to the risks arising cumulatively from such subdivision. The nature and scale of such risks in summary is:

- Ongoing creation of lots smaller than 12 ha and risks arising cumulatively for loss of productive opportunities, cross-boundary effects, changes in rural character and amenity values, hazard or contamination exposures, and in relation to inadequate or demand for higher levels of, infrastructure network services
- An historical context of a substantial proportion (~80%) of small (less than 10 ha) sites within the Rural 1 zone that together with increasing residential development on these, exacerbate these risks, despite the regulation at discretionary level of Rural 1 subdivision below the 12 ha lot size threshold over the period from 1998 to 2016 (Tasman District Council staff 2013: *Evaluation report on the effectiveness of the TRMP policies relating to rural land use and subdivision*).

The s 32 evaluation report for Change 60 (Tasman District Council 2016: *Report on assessment of alternatives under section 32 of the Resource Management Act Rural land use & subdivision policy review Plan Change 60* section 7.1) and the s 32AA officer evaluation report and the subsequent decision report (SAR 602) the appropriate set of key regulatory methods to reduce the fragmentation risks of Rural 1 land are evaluated as:

- better alignment of objectives and policies with the Rural 1 subdivision rules;
- other than boundary adjustments, the limiting by non-complying status of second generation Rural 1 subdivision (titles created after 30 January 2016) and Rural 1 subdivision into titles below the minimum threshold of 12 ha; and

- a one-off opportunity for a minimum average of 12 ha Rural 1 subdivision of any lot in existence before 31 January 2016.

A technical aspect of this lattermost evaluation trail is that despite these policy intentions, actual provision for this in the rule cascade for any 12 ha minimum average contravention, had not been drafted in either the first notified proposed Change 60 or its decisions version.

However, before the notification of Change 60 in January 2016, at the draft change stage, the non-complying status of subdivision below the threshold lot size of 12 ha was provided for in the draft section 32 evaluation report and in the draft plan change published in January 2015. After that point, the provision for a minimum average was developed.

At first notification in 2016, the minimum average provision for existing sites had not been complemented by the logically correct drafting to also provide this status for Rural 1 subdivision not complying with the minimum average of 12 ha on existing lots. While this was known to be by error of omission, there is little explicit accounting for its absence in the formally documented evaluation to date.

The specific purpose of the variation can readily be found to be appropriate in the context provided, including the established set of relevant objectives and policies that have been developed through Change 60. It is logically an additional source of control over a generation of small lot subdivision that is below the standard provided by the minimum average rule, and so over contribution of this potential outcome to the cumulative risks the planning framework has been in place to manage.

The secondary purpose of correcting rule displays and of describing how a type of subdivision exempted from the requirement to be existing as at 31 January 2016 is also appropriate in that unintended administrative risks arising from incorrect or incomplete displays, are avoided, thus being both efficient and more effective than the unamended provisions.

5 Effects Assessment of the Variation

The scope of effects arising from the variation provisions is limited to the effects of the change in subdivision status from discretionary to non-complying in Rural 1 Zone where:

- Any average of the net areas of lots in a Rural 1 subdivision is less than 12 ha; or
- The smallest lot in a Rural 1 subdivision is less than 5000 square metres; or
- The parent lot to be subdivided was not in existence on or before 31 January 2016.

The effects are most likely to revolve around the decision and outcome differences for contraventions of the average of 12 ha lot size. It is considered far less likely for the 5000 square metre limit to be contravened on its own, and any such breach is more likely to be in combination with contravention the minimum average. The re-subdivision scenario is no different from the current non-complying status.

The scale and nature of these effects is therefore an estimation of the benefits arising from the greater number of likely declining decisions of breaches of these standards compared with the status quo. Such benefits can be seen as the avoidance of contributory risks to the values of the Rural 1 zone from a pattern of likely significant interest in further relatively small lot Rural 1 subdivisions over any part of the Rural 1 zone over the reasonably foreseeable future. The relative stringency of non-complying status under the draft variation will significantly lessen the number of granted contravening subdivisions than the current discretionary status. The risks from the variation are lesser than under the status quo. This qualitative effects assessment provides a baseline for comparing identified options against the proposed variation's key amendments.

The technical amendments arising from the variation's secondary purpose have positive effects of avoiding administrative risks from incorrect sets of conditions and references in the rules to the scope of subdivision in some of these rules. In Rules 16.3.5.3A(c) (Rural 1 restricted discretionary subdivision) and 16.3.6.3A (Rural 2 restricted discretionary subdivision), subdivision sites exempted from the requirement to be existing as at 31 January 2016, are described as not being made under the Tasman Resource Management Plan. This is not a complete description of all non-RMA types of title creation which was the intended scope of exemption. The amendments in these rules to refer to subdivision not made under the RMA or equivalent legislation capture more completely the intended scope of exempted site for re-subdivision. These amendments avoid unintended restriction under the relevant condition, for Rural 1 and Rural 2 subdivision. This effect is not evaluated further in this report.

6 Assessment of Options to Achieve the Purpose

The set of regulatory options to give effect to the main purpose of the variation is limited. These are identified as:

1. The default of no amendment for the purpose of the variation - the status quo of retaining a discretionary status
2. A non-complying status for a contravening subdivision of only a certain lot number or certain lot size result as a proportional reduction by number of titles or area of Rural 1 otherwise potentially affected
3. Non-complying status for all contravening Rural 1 subdivision of the minimum average 12 ha (the proposed variation provisions)
4. Option 3 with policy specification as to what form of contravening subdivision would be either more or less appropriate in the context of the contribution of such a subdivision generation to cumulative risks.

Options	Costs	Benefits	Risks	Effectiveness/ Efficiency
Status quo: No change to Change 60	Additional cumulative land fragmentation effects from a potentially large number of Rural 1 subdivisions approved across the District	No benefits from avoided contributory risks from further small lots Likely additional small lot subdivision opportunities for all Rural 1 landowners	Large numbers of contravening Rural subdivision applications and resulting pattern of approvals that exacerbate the cumulative risks from Rural 1 land fragmentation	Low effectiveness as the issue and purpose of the variation is not addressed; inefficiency in policy settings and delivery as a potential pulse of Rural 1 small lots results, against the direction of the TRMP
Amendment Option 1: Defined small lots only non-complying	Potentially less than status quo	Greater benefits of avoided contributory risks than status quo Potentially less for landowners than status quo depending on the non-complying threshold(s)	Similar order to status quo as there are many uncertainties from additional numbers and locations	More effective and efficient than status quo
Amendment Option 2: All contravening subdivision non-complying (proposed variation)	Likely less than status quo and option 1 as much more limited scope for approved small lot subdivisions	Likely much less landowner benefits Significant benefits from virtual avoidance of small lot contributory risks	Contributory fragmentation risks significantly reduced	Most effective and efficient
Amendment Option 3: Option 2 with qualifying policy either supporting or constraining certain small lot outcomes	As for option 2	As for or less than option 2 depending on design	Potentially as for option 2 depending on design	Likely to be as effective as option 2 but less efficient as more complex decision-making with potential policy designs

4 Conclusion

The relative assessment of benefits, costs and risks arising or reduced from the options including the proposed variation and the status quo show a relative effectiveness and efficiency for the proposed variation, followed by option 3 depending on specific policy design. While this might be further tested, the conclusion of this evaluation is that the proposed variation provisions are the most appropriate amending proposal to Change 60 on the issue.