

Rule 1.0 Administration Provisions

Rule Statement

This Rule sets out those general, procedural and information provisions needed to facilitate the administration of the District Plan and to achieve the purpose of the RMA. It also includes advisory notes outlining notification procedures and additional powers of Council in respect of duties established under the RMA.

Where appropriate, the provisions of the RMA have been paraphrased to assist in the ease of use of this District Plan. However such clauses must not be relied upon in terms of formal legal advice and in such cases reference should be made to the full provisions of the relevant sections of the RMA.

1.1 District Plan Structure

1.1.1 Sections Comprising the District Plan

These Rules, the Introduction, Statement of Integrated Management, Resource Management Polices and Planning Maps comprise the City of Hamilton District Plan prepared in accordance with the requirements of the RMA and apply to the whole of the city.

1.1.2 The Rules

a) Effect of Rules

Any rule shall have the effect of a regulation under the RMA.

b) Relationship Between Rules

The rules in the District Place cannot be read in isolation. All activities shall be assessed against the relevant rules specified under:

- This rule
- [Rule Section 2.0](#) Overlays
- [Rule Section 3.0](#) City-Wide Activities
- [Rule Section 4.0](#) Zones
- [Rule Section 5.0](#) City-Wide Standards
- [Rule Section 6.0](#) Subdivision and Land Development
- [Rule Section 7.0](#) Designations
- [Rule Section 8.0](#) Definitions
- [Rule Section 9.0](#) Structure Plans.

c) Duty to Comply

No person may use any land in a manner that contravenes a rule in the District Plan or may subdivide any land except as provided for in the District Plan unless the activity is expressly allowed by a resource consent, is an existing use allowed by Sections 10 or 10A of the RMA, or is a subdivision provided for under Section 11 of the RMA.

1.1.3 Interpretation**a) Definitions**

In this District Plan the Definitions (Rule Section 8.0) forming part of these rules or in the RMA shall apply, unless the context otherwise requires. Where any term is not so defined, then the normal dictionary meaning appropriate to the context shall be used.

b) Provision for Activities

Subject to Section 310 of the RMA, where any activity is not expressly mentioned in this District Plan and that activity falls naturally into a general class of authorised activities and the environmental effects are essentially identical, then that activity may be deemed to be included in that class of activities. But where any activity is specifically defined, then notwithstanding its inclusion in a general class of activities, provision for that activity may not be extended to authorise the other activities in that class.

1.2 Information Requirements**1.2.1 Information to Accompany all Applications**

The following information is to be supplied, where relevant, with any application, including resource consents, certificates of compliance and project information memoranda, to enable Council to fully assess compliance with the District Plan.

a) Background information

An introductory background providing a clear description of:

- the proposed activity and how it is intended to operate
- the proposed use of all existing and proposed buildings on the site
- the current use of the site
- resource consents applied for.

b) Information to be shown on plans

Plans submitted with any application will show site layout, site development, existing and proposed buildings, topographical information and any other features relevant to the application in sufficient detail and accuracy to readily enable compliance to be assessed or environmental effects to be evaluated with respect to:

- bulk and location of buildings
- floor area requirements

- maximum height and building control planes
- provision of outdoor spaces for living, service or storage
- distance from site boundaries to buildings
- access, manoeuvring, parking and loading of vehicles
- existing vegetation to be retained and proposed planting and landscaping
- screening and privacy
- utility services
- nature and extent of earthworks
- signs
- natural, heritage, and waahi tapu features
- any other information Council considers relevant to the application.

c) Adverse environmental effects

Reports and management plans demonstrating how adverse environmental effects associated with the proposed activity are to be avoided, remedied or mitigated with respect to:

- nuisances such as noise, dust, odour, glare, and vibration
- stormwater disposal
- hazardous facilities and substances
- discharges of contaminants.

d) Certificate of Title

Certificates of Title are to be provided with all applications when requested by Council to help identify any restricted areas or easements.

e) Other information

Any other information describing the proposed activity which could be relevant in evaluating the proposal.

1.2.2 Additional Information to Accompany all Resource Consent Applications

a) Information Required

In addition to the information specified in [Rule 1.2.1](#) above, any other relevant plans, reports, or information are to be provided with any application for a resource consent, to enable Council to fully assess and determine the proposal, including:

- details and outcomes of any consultation undertaken
- design and appearance of buildings
- planting plans and site design/layout plans

- potential future subdivision of site
- any other relevant rules or provisions in the District Plan, such as overlay provisions and bonus provisions.

ADVISORY NOTE – Consultation with Waikato Iwi and Local Hapu

Natural Features and Tangata Whenua Historical and Cultural Sites

Tangata Whenua Historical and Cultural Sites and natural features are of significance to Waikato Iwi and local hapu. In respect of any developments or activities requiring a resource consent, or for plan changes it is advisable that Waikato Iwi representatives are notified at the earliest stages of planning. This will assist with the identification and mitigation of any potential adverse effects that may impact on Waikato Iwi cultural values. It is also advisable that before any archaeological surveys or investigations are undertaken that Waikato Iwi representatives are consulted.

It is recognised that traditional Iwi/hapu customary processes are a complementary method of control outside the District Plan for activities that can adversely affect cultural values associated with natural features (such as the pollution of waterways that are used as important food gathering sites). Customary processes may vary in different situations and could include:

- *Mauri – the notion of respect towards the health and well-being of significant sites*
- *Rahui – an embargo or restriction on access to a site until it is lifted (usually in relation to a polluted or hazardous site).*

Consultation with Waikato Iwi can assist in identifying any appropriate customary processes to be followed where special tangata whenua values are identified.

b) Subdivision Applications

In addition to the matters specified in [Rule 1.2.2 a\)](#) above, any subdivision application shall include plans, reports, and other information to show how the proposed allotments and access can adequately accommodate the development potential of the site.

A checklist is provided by Council outlining all the information required with a subdivision application. In particular, details of the following matters should be provided:

- area, dimensions, shape factor circles, building platforms, and access/frontage for each allotment
- existing vegetation proposed for retention or removal
- location of proposed roads, reserves, easements, and essential services
- land to be vested in the Crown, Council, or network utility operator
- nature and standard of existing and proposed roads and network utility services such as sewage disposal, stormwater management, water supply, telecommunications, and electricity supply
- proposed final legal status (eg. freehold, cross-lease, unit title)
- any additional information specified in Section 219 of the RMA.

c) Assessment of Environmental Effects

An assessment of the environmental effects of a proposal shall be provided with applications for resource consents. Any such assessment shall be prepared in accordance with the Fourth Schedule of the RMA and shall describe how any adverse environmental effects are to be avoided, remedied, or mitigated, and shall also ensure that the following matters are addressed:

- consultation undertaken with affected parties
- effects of the proposal on the natural environment (including existing vegetation and natural land form), neighbourhood amenity, and infrastructure
- heritage issues (such as waahi tapu)
- site constraints (such as flooding)
- external impacts (such as discharges)
- construction impacts (such as noise)
- other matters associated with the proposal.

In the case of Controlled and Restricted Discretionary Activities the assessment of environmental effects need only address those matters which Council has retained control over or restricted their discretion to in the District Plan.

1.2.3 Further Information

Where Council considers that the information submitted with an application for the resource consent is inadequate in terms of the requirements of the RMA or the provisions of this Plan, it may request further information from the applicant.

Where Council is of the opinion that any significant adverse effect on the environment may result from an activity to which an application for a resource consent relates, Council may also, in accordance with Section 92 of the RMA, require: an explanation of any possible alternative locations or methods for undertaking the activity and the applicant's reasons for making the proposed choice; an explanation of the consultation undertaken by the applicant; and commission a report on any matters raised in relation to the application, including a review of any information provided in an application under Section 88(4). The cost of a commissioned report may be recovered from the applicant pursuant to Section 36 of the RMA.

Further information may be required under Section 92 only if the information is necessary to enable the consent authority to better understand the nature of the activity in respect of which the application for a resource consent is made, the effect it will have on the environment, or the ways in which any adverse effects may be mitigated.

1.3 Advisory Information

The following advisory notes are included to clarify the relationships between the District Plan and other planning documents, and to outline some of the procedures required by the RMA to assist in the use of this District Plan. A number of provisions of the RMA have been paraphrased in this section but should not be relied upon in terms of legal advice.

NOTE A: RELATIONSHIP TO OTHER DOCUMENTS

By-Laws, Code of Practice and Reserve Management Plans

In the event of any inconsistency with the provisions of any Bylaw, Code of Practice or Reserve Management Plan, the provisions of this District Plan shall prevail. Where reference is made to the provisions of any Code of Practice or Reserves Management Plan in any rule in this District Plan, such reference shall only be for the purpose of providing guidance in the setting of conditions with respect to a resource consent.

Effect of Regional Plans

In carrying out its functions under the RMA, Council must have regard to the Regional Policy Statement as adopted by Environment Waikato (the Regional Council) and the provisions of this District Plan must not be inconsistent with the provisions of any Regional Plan adopted by that Council.

Activities to Comply with Regional Plans

Notwithstanding compliance with the provisions of this District Plan any activity involving:

- the taking, diverting or damming of any natural water*
- the discharge of any contaminant into air, into natural water or onto land*
- the clearance of vegetation in high risk erosion areas or within 5m of a waterbody*

shall only be allowed in accordance with any rule in a Regional Plan unless expressly allowed by a resource consent granted by or on behalf of Environment Waikato.

Transfer of Powers

Pursuant to Section 33, a local authority that has functions, powers or duties under the RMA may transfer any one or more of those functions, powers or duties to another public authority (ie. any local authority, iwi authority, Government department, statutory authority, or joint committee set up for the purposes of Section 80).

NOTE B: PROVISION FOR ACTIVITIES**TYPES OF ACTIVITIES****Permitted Activities**

Any activity classified as Permitted is allowed as of right subject to full compliance with the standards, terms, restrictions and prohibitions specified in this District Plan.

Controlled Activities

Any activity classified as Controlled shall require a Resource Consent, however a Resource Consent must be granted, subject to full compliance with the standards, terms, and restrictions specified in this District Plan and with any conditions imposed in respect of those matters over which Council has specifically reserved control.

Restricted Discretionary Activities

Any activity classified as Restricted Discretionary shall require a resource consent but only in respect of those matters over which Council has reserved discretion, which may be granted subject to suitable conditions or refused. The activity shall otherwise be allowed subject to compliance with all the other standards, terms, restrictions and prohibitions specified in this District Plan.

Discretionary Activities

Any activity classified as Discretionary shall require a resource consent and, in accordance with the provisions of this District Plan, may be granted subject to suitable conditions or refused.

Non-Complying Activities

Any activity classified as Non Complying on the basis of contravening any rule specified in this District Plan shall require a resource consent which may, in accordance with the provisions of Sections 104 and 105(2)(A) of the RMA, be granted subject to suitable conditions or refused.

Prohibited Activities

No activity classified as Prohibited may be undertaken or a resource consent applied for. (There are no Prohibited Activities specified in the District Plan).

Existing Lawful Activities

In accordance with Sections 10 and 10A of the RMA, any use of land contravening a rule in the District Plan, but lawfully established prior to that rule coming into effect, is permitted to continue in specified circumstances.

DETERMINATION OF CONSENTS**Types of Consent**

Council has responsibility to administer two types of resource consent under Part IV of the RMA:

- land use consent
- subdivision consent.

Consideration of Consents

In considering any application for a resource consent, Council shall have regard to Part II of the RMA, the need to avoid, remedy or mitigate effects on the environment and the relevant matters contained in this District Plan, in particular with respect to:

- *Controlled Activities - the expected outcome and the related performance assessment*
- *Restricted Discretionary Activities - the related objectives and policies, expected outcome, means of compliance, and performance assessment but only where relevant to the matter for which discretion is restricted*
- *Discretionary Activities - the relevant objectives and policies, the expected outcome, the relevant means of compliance, performance assessment and other rules*
- *Non-Complying Activities - the objectives and policies and the related expected outcomes.*

OTHER PROVISIONS FOR APPLICATIONS IN THE RMA***Certificate Of Compliance***

A Certificate of Compliance in accordance with Section 139 of the RMA may be obtained with respect to any permitted activity or existing activity and is similar in effect to a resource consent.

Change, Cancellation and Review of Conditions

A consent holder may apply to Council pursuant to Section 127 of the RMA for a change or cancellation of any condition of consent where provided for in that consent or where circumstances change.

Council may review the conditions of consent pursuant to Sections 128 and 129 of the RMA where provided for in that consent or where inaccuracies in the application are subsequently found.

Lapsing of Consents

Pursuant to Section 125 of the RMA, any resource consent shall lapse if after two years, (or any shorter or longer period specified in the approval) substantial progress is not being made to giving effect to the consent.

Declarations

Pursuant to Section 310 of the RMA, persons may apply to the Environment Court for a declaration on a number of matters including the status of activities.

Requirements and Designations

Pursuant to Section 168 of the RMA, the Crown, local authorities and authorised network utility operators may issue a requirement that provision be made in the District Plan for certain works, such as by designation.

Pursuant to Section 189 of the RMA, the Crown, local authorities, the Historic Places Trust and authorised heritage protection authorities may issue a requirement that provision be made in the District Plan for the protection of a specified heritage feature.

Requests for Plan Changes

Pursuant to Section 73 of the RMA, persons may request the Council to introduce a change to the District Plan.

Appeals

Pursuant to Section 120 of the RMA, any party to a resource consent dissatisfied with the Council's decision may appeal the matter to the Environment Court.

Objections

Pursuant to Section 357 of the RMA, any person who has made an application under Section 10(2), 124(b), 125, 126, 139, 182, or Section 184 shall have the right of objection to the consent authority's decision on that application, with the exception of those circumstances outlined in Section 357(2).

NOTE C: NOTIFICATION OF APPLICATIONS**APPLICATIONS THAT NEED NOT BE NOTIFIED**

Section 94 of the RMA sets out situations when applications need not be publicly notified.

Controlled Activities

- Subdivision consent for a Controlled Activity.
- Resource consent for a Controlled Activity.

Restricted Discretionary Activities

- Resource consent or subdivision consent for a Restricted Discretionary Activity (where the District Plan expressly permits consideration without the need to obtain the written approval of affected persons).
- Any other resource consent for a Restricted Discretionary Activity (for which written approval is required and has been obtained from affected persons).

Discretionary and Non-Complying Activities

- Resource consent or subdivision consent for Discretionary or Non-Complying Activities (if the adverse effects of the proposal are minor and written approval has been obtained from affected persons).

APPLICATIONS WHICH SHALL BE NOTIFIED

In any case where affected persons' approvals are required but have not been obtained, or in any case where Council considers that the effects are more than minor, the application shall be notified.

Council may in special circumstances require any application for a resource consent or subdivision consent to be notified in accordance with Section 93 of the RMA.

CONSENT OF AFFECTED PERSONS

Written approval must be obtained from every person whom Council is satisfied may be adversely affected unless the District Plan provides otherwise or unless Council considers it is unreasonable in the circumstances to require every such approval.

When consent is given by an affected person, Section 94 of the RMA provides that Council shall take no account of the environmental effects of the proposal on that person.

INFORMATION TO BE GIVEN TO AFFECTED PERSONS

Any information necessary to obtain the written approval of affected persons shall contain sufficient detail to ensure that the affected person understands the general nature of the application and whether it will affect them. This may include plans, elevations and supporting reports, where appropriate.

CONSIDERATION OF NOTIFICATION OF APPLICATIONS***Whether to notify***

Council will determine whether an application requires notification based on who is affected, if they have consented, and the extent of the effects. Notwithstanding that the approval of all affected persons considered to be directly affected has been obtained, where the effects are more than minor, or the wider community may be adversely affected, the application shall be publicly notified.

Consent applications for relocation of buildings as a controlled activity in the Residential zone and the Future Urban zone shall be processed without public notification and without the need for consent of potentially affected persons, subject to Section 94(5) of the Resource Management Act 1991, and except in locations covered by the Heritage Items Overlay or the Heritage Precinct Overlay, where additional requirements may apply.

Affected Persons

In determining whether persons may be adversely affected, Council will amongst other things have regard to whether:

- the neighbouring landowners and/or occupiers would have reasonable expectations as to the likely activities on the site based on the provisions of the District Plan
- the activity may have potential to affect any neighbouring landowners and /or occupiers enjoyment of their property due to shading, privacy, traffic, disturbance or other concerns
- there are natural, heritage, waahi tapu or other features of the site in which a responsible organisation, including tangata whenua, may have an interest.

General Matters to be Considered

In determining whether the effects of an activity are minor such that an application need not be notified, Council will amongst other matters have regard to:

- the relevant objectives, policies and expected outcomes specified in the District Plan
- what extent it departs from the means of compliance or other standards, terms or restrictions specified in the District Plan

- *whether due to its character, scale and intensity, the effects are the same or similar to those of permitted activities in the zone*
- *the extent to which the effects can be avoided, remedied, or mitigated*
- *the cumulative effects of the proposal related to the presence of activities and buildings already located in the area or on the site.*

Specific Matters to be Considered

Council will also have regard to specific matters such as:

- *the effects of traffic generation (including increases in vehicle movement, parking in adjacent streets, and road capacity) on safety, and neighbourhood amenity and character*
- *whether the proposal will exacerbate or contribute to the potential for natural hazards such as flooding, erosion or instability of land*
- *whether there is potential for the discharge of contaminants, wastes, or use, storage or transportation of hazardous substances to adversely affect the environment (especially soils, water and air) and/or affect people's health and safety*
- *whether it may cause the disturbance, alteration, removal or destruction of heritage sites and waahi tapu, and loss or degradation of protected trees*
- *whether it will result in the significant degradation or loss of valued areas of natural environment (including vegetation, habitats, wildlife, watercourses, gullies, and outstanding landscape features)*
- *whether there will be adverse effects on amenity of the neighbourhood including loss of neighbourhood character, physical domination of adjacent sites, the visual impact from other sites, loss of privacy for adjacent residential sites and loss of neighbourhood green space*
- *whether there are effects on neighbourhood amenity through disturbances such as noise, glare, dust, vibration, or odour*
- *whether public access to and along the Waikato River, lakes and other water bodies is adversely affected.*

NOTIFICATION PROCEDURE

The notification of any application is to be carried out in accordance with the requirements of Section 93 of the RMA. Council must publish notified applications in a local newspaper, ensure notices are erected on the affected site and send details to the following persons, as appropriate:

- *Owners and occupiers of the land*
- *Other persons likely to be directly affected*
- *Minister of Conservation*
- *Iwi authorities*
- *Other persons and authorities who in the opinion of Council may be adversely affected.*

Any person may make a submission and be heard on a notified application.

NOTE D: HEARINGS**JOINT HEARINGS BY 2 OR MORE CONSENT AUTHORITIES**

Pursuant to Section 102 of the RMA, where applications for resource consents in relation to the same proposal have been made to 2 or more consent authorities, and those consent authorities have decided to hear the applications, the consent authorities shall jointly hear and consider those applications;

Unless – all the consent authorities agree that the applications are sufficiently unrelated that a joint hearing is unnecessary and the applicant agrees that a joint hearing need not be held.

NOTE E: OTHER POWERS OF COUNCIL**DUTY TO AVOID REMEDY OR MITIGATE ADVERSE EFFECTS****General Duty**

Pursuant to Section 17 of the RMA, every person carrying out an activity has a duty to avoid, remedy or mitigate any adverse effect on the environment arising from that activity regardless of whether it is in accordance with the District Plan or a resource consent, or is an existing activity.

Abatement Notices and Enforcement Orders

Council may issue an abatement notice pursuant to Section 322 of the RMA, or an enforcement order may be sought pursuant to Section 314 of the RMA, with respect to an activity that is likely to be noxious, dangerous, offensive or objectionable to such an extent that it has, or is likely to have, an adverse effect on the environment requiring that action be taken to avoid, remedy or mitigate any adverse environmental effect.

Matters to be Considered

In taking any action under this rule, Council shall in addition to the circumstances specified elsewhere in this District Plan have regard to the need to avoid, remedy or mitigate:

- any discharge of contaminants, dust or odour which is a danger to people, property or the environment or is a substantial nuisance
- any property or structure being developed in a manner or maintained in a state which significantly detracts from the amenity of the neighbourhood or represents a hazard
- any emission of noise, movement of vehicles or behaviour of people associated with an activity which significantly diminishes the enjoyment of persons in the vicinity.

Modification or Refusal of Adverse Proposals

Notwithstanding that any activity may be specified in this District Plan as a Permitted, Controlled, Restricted Discretionary, or Discretionary Activity, in order to avoid remedy or mitigate any adverse environmental effect or minimise the risk of hazard, Council may, pursuant to its powers under the RMA and other legislation, refuse or require modification or special treatment of any proposal to undertake an activity if:

- *the site is or would be subject to, or the activity will give rise to, flooding, erosion, landslip or instability*
- *network utility services, waste disposal facilities or access roading have insufficient capacity to accommodate that activity and it would be beyond the reasonable resources of Council or other authorities to provide additional capacity*
- *the activity would result in a discharge of contaminants, dust or odour, or an emission of noise, or the generation of traffic, or the presence of hazardous substances such as to be a danger to people, property or the environment or is a substantial nuisance*

