

Rule 2.1 Environmental Protection Overlay

Rule Statement

This overlay identifies restrictions on development in areas that are adjacent to the Waikato River, or are a part of, or adjacent to the gully systems, peat lakes and wetlands. The Environmental Protection Overlay will not preclude developments that can meet the performance standards and assessment criteria. The boundary of the overlay may not necessarily coincide with land ownership boundaries or the boundaries of other land use zones.

The purpose of the Environmental Protection Overlay (EPO) is to encourage the protection and enhancement of ecosystems, the habitats of plants, birds and other wildlife and ecological corridors. As a direct result, the natural, and amenity values associated with these habitats will also be protected.

The EPO closely coincides with and has been adjusted to incorporate identified potential natural hazard areas, particularly in terms of flooding and land instability (accelerated erosion). The EPO will help to identify these natural hazards and minimise the exposure of activities to these hazards through rules and standards.

The overlay will provide controls over earthworks (including filling), vegetation removal, impermeable surfaces, and buildings (particularly minimum floor levels, and setbacks from waterways).

Expected Outcome

Development does not adversely affect identified ecological corridors, habitats of flora and fauna and their associated natural and amenity values and does not increase exposure to natural hazards.

Means of Compliance

The following rules shall be read in conjunction with the standards and performance assessments in the underlying zone, and all other rules in the Plan.

The Environmental Protection Overlay rules shall be complied with first, then the relevant underlying zone or city-wide rules shall apply. The activity status of a Permitted or Controlled Activity may be altered from the activity list below where the activity cannot meet one or more of the standards in this rule. For clarification of activity status, see [Rule 2.1.3 – Failure to Meet Standards](#).

Regard must be had to all Objectives and Policies which may be relevant to any proposed activity subject to the provisions of this Rule. This includes, but shall not be limited to, Policy Sections 3.1 Natural Values and 3.2 Natural Hazards.

2.1.1 Activities

a) Permitted Activities

Any Permitted or Controlled Activity in an underlying zoning and any City-Wide Activity shall comply with the standards in [Rule 2.1.2](#).

The following activities are Permitted Activities provided they comply with the relevant standards in [Rule 2.1.2](#):

- Trimming and Maintenance of Existing Vegetative Cover
- Vegetation Removal
- Earthworks (including those involving the use of clean fill)
- Activities undertaken by or at the direction of a local authority for the purpose of management or eradication of plant pest species.

b) Discretionary Activities

Discretionary Activities in an underlying zone shall be Discretionary Activities within the EPO and additionally measured against the General Criteria and Specific Criteria of [Rule 2.1.4](#). Applications for a Discretionary Activity shall include a Proposed Site Management Plan (see [Rule 2.1.3 c\)](#)).

The following activities are Discretionary Activities:

- The placing of any culvert along any stream (provided that this shall not apply to the construction of any road across a gully as part of an approved subdivision or designation).

c) Non-Complying Activities

The following activities are Non-Complying Activities:

- Earthworks involving the use of unclean fill.

ADVISORY NOTE

In addition to the District Plan controls, Reserve Management Plans prepared under the Reserves Act 1977 guide and control the day to day management and use of land that is held as Council reserve land. The following specific management plans have relevance to the Waikato River corridor and gullies:

- *Riverside Reserve Management Plan*
- *Hamilton Gardens Management Plan*
- *Miropiko Reserve Management Plan*
- *Nga Tapuwae O Hotumauea – Maori land marks on Riverside Reserves Management Plan*
- *Donny Park Reserve Management Plan*
- *Gully Reserves Management Plan*

2.1.2 Specific Standards

The following standards apply to the activities specified below.

These standards shall only apply to that part of the site within the relevant layer of the EPO, with the exception of Rule 2.1.2 a) v), Rule 2.1.2 b) v) and Rule 2.1.2 c) v).

ADVISORY NOTE

Any replanting of vegetation within the EPO should have regard to the Regional Pest Management Strategy 1998, and should not include plant pest species as identified within the strategy.

a) Peat Lakes and Peat Lake Catchments Layer of the EPO

- i) Building Setback
 - The minimum building setback from the margin of any peat lake or wetland shall be 50m plus the relevant setback requirement for the relevant zone.
- ii) Impermeable Surfaces
 - The maximum area of impermeable surfaces of that part of the site within the peat lakes and peat lake catchments layer of the EPO, shall not exceed 40%.
- iii) Vegetation Removal
 - Any area of vegetation removed within 5m of the margin of any peat lake/wetland shall be replanted with an equivalent area of appropriate wetland species within one calendar month.
- iv) Earthworks (Including Clean Fill)
 - The maximum volume of earthworks shall not exceed 40m³ per site per calendar year.
 - Earthworks shall not take place within 5m of the margin of any peat lake or wetland.
- v) Stormwater Disposal
 - Stormwater run-off from any new building on any site that is wholly or partly covered by the Peat Lakes and Peat Lake Catchments layer of the EPO and adjacent to any peat lake or wetland, shall be disposed of directly to the ground.
 - The design and implementation of any stormwater disposal system shall be in accordance with the Hamilton City Council Development Manual – February 2000.

b) Gully Layer (Gully Soil and Slopes > 25°) of the EPO

- i) Building Setback
 - The minimum building setback from the edge of the banks of the Waikato River or any natural watercourse shall be 6m.
- ii) Impermeable Surfaces
 - The maximum area of impermeable surfaces of that part of the site within the gully layer of the EPO, shall not exceed 40%.

- iii) Vegetation Removal
 - Any area of vegetation removed within 5m of the banks of the Waikato River, or any natural watercourse, shall be replanted with an equivalent area within one calendar month of removal.
 - Any area of vegetation removed, beyond 5m from the banks of the Waikato River or any natural watercourse, and/or on any land with a slope $> 25^\circ$ shall be replanted with an equivalent area or covered with an impermeable surface in accordance with Rule 2.1.2 b) ii) within one calendar month of removal.

- iv) Earthworks (Including Clean Fill)
 - The maximum volume of earthworks shall not exceed 40m³ per site per calendar year.
 - Earthworks shall not take place within 5m of the edge of the banks of the Waikato River or any natural watercourse, or on slopes $> 25^\circ$.
 - The maximum length of any culvert shall be 6m.
 - The maximum diameter of any culvert shall be 300 mm.

- v) Stormwater Disposal
 - Stormwater run-off from any new building on any site which is wholly or partly covered by the Gully Layer of the EPO and adjacent to the river-bank or any gully bank shall be disposed of directly to a reticulated system, or to a reticulated system via the kerb and channel.
 - The design and implementation of any stormwater disposal system shall be in accordance with the Hamilton City Council Development Manual – February 2000.

c) Gully Layer (Gully Soil and Slopes $< 25^\circ$) of the EPO

- i) Building Setback
 - The minimum building setback from the edge of the banks of the Waikato River or any natural watercourse shall be 6m.

- ii) Impermeable Surfaces
 - The maximum area of impermeable surfaces of that part of the site within the gully layer of the EPO, shall not exceed 40%.

- iii) Vegetation Removal
 - Any area of vegetation removed within 5m of the banks of the Waikato River or any natural watercourse, shall be replanted with an equivalent area within one calendar month of removal.

- iv) Earthworks (Including Clean Fill)
 - The maximum volume of earthworks shall not exceed 40m³ per site per calendar year.
 - Earthworks shall not take place within 5m of the edge of the banks of the Waikato River or any natural watercourse.
 - The maximum length of any culvert shall be 6m.

- The maximum diameter of any culvert shall be 300 mm.
- v) Stormwater Disposal
- Stormwater run-off from any new building on any site which is wholly or partly covered by the Gully Layer of the EPO and adjacent to the river-bank or any gully bank shall be disposed of directly to a reticulated system, or to a reticulated system via the kerb and channel.
 - The design and implementation of any stormwater disposal system shall be in accordance with the Hamilton City Council Development Manual – February 2000.
- d) **Significant Remnant or Regenerated Indigenous Vegetation Layer of the EPO**
- i) Vegetation Removal
- No remnant or regenerated indigenous vegetation shall be removed.
- e) **Culvert Flood Layer of the EPO**
- i) Erection and alteration of buildings
- The minimum floor level for any new building and alterations to existing buildings (excluding accessory buildings) shall be above the flood level shown on the planning maps.
- f) **River Flood Layer of the EPO**
- i) Erection and alteration of buildings
- The minimum floor level for any new building (excluding accessory buildings) shall be located at least 0.3m above the relevant River Flood Level shown on the planning maps.

2.1.3 Failure to Meet Standards

- a) Activities which do not comply with one or two of the performance standards of Rule 2.1.2 are **Restricted Discretionary Activities**, with discretion limited to the subject matter of the standard that can not be met. Applications for a **Restricted Discretionary Activity** will not require the notification of affected parties.
- b) Activities which do not comply with three or more standards in Rule 2.1.2 are **Discretionary Activities**.
- c) Any application for a **Restricted Discretionary** or a **Discretionary Activity** shall be accompanied by a Site Management Plan. For **Restricted Discretionary Activities** the information required as part of the Site Management Plan shall only relate to those matters of non-compliance. A Site Management Plan shall detail the following matters:
- Location of all existing buildings
 - The siting of all proposed buildings and structures (including retaining walls)
 - Existing and proposed site contours at 1m intervals
 - All existing vegetation (including details of species) and landscaping

- Location and extent of areas of vegetation being retained
- Location of new landscaping including details of species and impermeable surface areas
- The location of vehicle access, manoeuvring and parking areas
- Drainage disposal methods from any existing or proposed building and all sealed and impermeable ground surfaces
- Any spring or groundwater seepage
- A description of the measures to be undertaken to help prevent or reduce effects on:
 - Ecosystems, plants and animals and any disturbance of habitats
 - Any natural watercourse including any discharge of sediment to the waterway and any effect on water quality, water clarity, and in-stream habitats
 - Land stability, erosion or any other natural hazard including any modification to landforms and removal of vegetation.

Performance Assessment

In determining any resource consent, Council shall have regard to the expected outcome for this rule and the relevant underlying zone, to any related objectives and policies, and to the following.

2.1.4 Assessment Criteria – Restricted Discretionary and Discretionary Activities

Restricted Discretionary Activities will be assessed only in respect of the subject matter of the standard with which the activity was unable to comply and with the specific criteria below.

Discretionary activities will be assessed against, but not limited to, the assessment criteria below.

a) General Criteria

- i) The extent to which the proposal is necessary or desirable:
 - to ensure the safety or integrity of existing development on the site
 - to provide adequate sunlight
 - to preserve public views.

b) Specific Criteria

Peat Lakes and Peat Lake Catchments

- i) The extent to which impermeable surfaces adversely affect water quality, and the surrounding water table.
- ii) Whether vegetation removal adversely affects the natural character or landscape value of any lake or wetland and the ability to offset such effects through restoration or enhancement.
- iii) Whether any earthworks will adversely affect the surrounding water table and water quality and the opportunity to mitigate the loss of water from the site.
- iv) The extent to which earthworks exacerbate or contribute to flooding, both on-site and off-site.

- v) Whether the removal of peat soils can be minimised to protect the surrounding water table.
- vi) Where it is clearly impractical to dispose of stormwater to ground the provision of other mitigation measures to maintain the water table and protect water quality.
- vii) Whether undertaking the activity will enable replacement or enhancement of existing vegetation, natural values, or the improvement of riparian margins.

Gullies

- i) Any potential for increased erosion or instability of land that may be caused by the activity.
- ii) The opportunity for screening, planting or landscaping to reduce the potential for erosion or instability.
- iii) Any effects on natural character, landforms or habitats within the site and measures to mitigate these effects.
- iv) The ability to manage disturbance caused to vegetation, habitats or natural features on the site.
- v) Any effects on the overall resilience, biodiversity and health of the Green Network particularly in terms of reducing impacts on, and retaining linkages between, significant natural areas.
- vi) Whether undertaking the activity will enable replacement or enhancement of existing vegetation, natural values, or the improvement of riparian margins.
- vii) Any effects on existing water quality, clarity, flow and in-stream habitat in any adjoining stream or river and the effectiveness of any measures proposed to mitigate such effects.
- viii) Any effect of the activity on stormwater flooding problems on-site or in any other part of the stream catchment, with particular regard to impacts in flood-prone areas.
- ix) Any potential for the loss of amenity values including the open space character, vegetation, visual relief from buildings, and opportunities for privacy and quiet.

Significant Remnant or Regenerated Indigenous Vegetation

- i) Any effects on natural character or habitats within the site and measures to mitigate these effects.
- ii) The ability to manage disturbance caused to vegetation and habitats on the site.
- iii) Any effects on the overall resilience, biodiversity and health of the Green network particularly in terms of reducing impacts on, and retaining linkages between, significant natural areas.
- iv) The opportunity for screening, planting, or landscaping to reduce the visual impact of buildings or structures.
- v) Whether undertaking the activity will enable replacement or enhancement of existing vegetation, natural values, or the improvement of riparian margins.
- vi) Any potential for increased erosion or instability of land that may be caused by the activity, particularly along gully and riverbanks.

Culvert Flood

- i) The ability to establish the activity elsewhere on the site beyond the area covered by the EPO.

River Flood

- i) The ability to establish the activity elsewhere on the site beyond the area covered by the EPO.