
Subject: Regional Response – Proposed Land Use Compatibility Guideline

Report to: Planning and Economic Development Committee

Report date: Wednesday, August 11, 2021

Recommendations

1. That Report PDS 34-2021 **BE RECEIVED** for information;
2. That staff **BE DIRECTED** to continue to provide detailed comments on the Ministry of the Environment, Conservation and Parks' proposed Land Use Compatibility Guideline (ERO #019-2785), and any associated matters, as warranted; and
3. That Report PDS 34-2021 **BE CIRCULATED** to local area municipal Planning Directors.

Key Facts

- This report provides an overview of the proposed Land Use Compatibility Guideline ("Guideline").
- On May 4, 2021, the Ministry of the Environment, Conservation and Parks ("MECP") released the draft Land Use Compatibility Guideline and set July 3, 2021 as the consultation deadline.
- On July 2, 2021, the MECP extended the consultation deadline until August 6, 2021.
- Staff prepared comments on the proposed Land Use Compatibility Guideline for submission to the Environmental Registry of Ontario ("ERO"). A copy is attached as Appendix 1.

Financial Considerations

There are no financial considerations directly linked to this report.

The proposed Land Use Compatibility Guideline may have a financial impact on the proponents of development within the Region. The proposed Minimum Separation Distances and Areas of Influence may result in an increase in the quantity of compatibility studies, and demonstration of need, required to support *Planning Act* applications.

Analysis

The Province's Proposed Land Use Compatibility Guideline

The proposed Land Use Compatibility Guideline is intended to replace components of the existing MECP D-Series Guidelines (Environmental Land Use Planning Guides), which were first introduced in the 1990s.

The Province developed the Land Use Compatibility Guideline to assist land use planning authorities and proponents of development in planning for land use compatibility that protects the long-term viability of major facilities while avoiding, or if avoidance is not possible, minimizing and mitigating adverse effects to the surrounding community.

The Guideline is to be applied to achieve and maintain land use compatibility between major facilities and sensitive land uses when a planning approval under the *Planning Act* is needed in the following circumstances:

- A new or expanding sensitive land use is proposed near an existing or planned major facility; or
- A new or expanding major facility is proposed near an existing or planned sensitive land use.

The proposed Land Use Compatibility Guideline will be implemented through PPS Policy 1.2.6.1, which states, "*major facilities and sensitive land uses shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects...in accordance with provincial guidelines, standards and procedures.*" The PPS has also aimed to protect and preserve employment areas for current and future uses, and provide long-term operational economic viability of the uses and functions of these areas. The current policies are found in Section 1.3.2 of the 2020 PPS, and note that "*employment areas planned for industrial and manufacturing uses shall provide for separation or mitigation from sensitive land uses.*"

The proposed Land Use Compatibility Guideline is to be applied when an approval under the *Planning Act* is needed. The Guideline applies in situations where the land

use is not changing, but the nature and/or intensity of the land use is, and an application under the *Planning Act* is required (e.g., difference in building height). It is also applicable in situations where there is a new use proposed for an existing building and an application under the *Planning Act* is required (e.g., residential use proposed in previous commercial building).

Through the Municipal Comprehensive Review (“MCR”) Niagara Official Plan Review, Regional staff will be updating the current Regional Official Plan to be consistent with and conform to the 2020 PPS and A Place to Grow: Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”; 2019) with regard to land use compatibility. The Region will look to the MECP guidance for ways to address land use compatibility and leverage the available tools under the *Planning Act* when refining Regional policies.

Key Changes

The proposed Land Use Compatibility Guideline provides a policy basis approach to land use compatibility, which is represented by a decision-making hierarchy to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects between incompatible uses. The following discussion presents some of the key changes proposed in the Land Use Compatibility Guideline.

Specified Major Facilities, Classes of Major Facilities & Characteristics

The proposed Land Use Compatibility Guideline assigns specific Area of Influences (AOIs) and Minimum Separation Distances (MSDs) to certain types of major facilities. The facility-specific AOIs and MSDs provide for more clarity in the planning process and consistent implementation across planning authorities.

The AOI is the area surrounding the property boundary of an existing or planned major facility where adverse effects on surrounding sensitive land uses have a moderate likelihood of occurring. Within AOIs, compatibility studies are required for proponents of proposed major facilities or proposed sensitive land uses as part of the supporting documentation for a planning application.

The MSD is a recommended minimum distance from a major facility within which adverse effects to a sensitive land use are highly likely to occur. Planning authorities should not allow sensitive land uses within the MSD. Where a sensitive land use is proposed within the MSD, a demonstration of need is required.

Introduction of Five (5) Industrial Class Facilities

The Guideline introduces five (5) industrial facility classifications, in comparison to the existing three (3) industrial facility classifications in the current D-Series Guidelines. Descriptions of major facilities at each class are provided below:

- Class 1: Operations with known smaller adverse effects.
- Class 2: Operations with moderate adverse effects. May include some outdoor operations.
- Class 3: Operations with moderate to significant adverse effects that may be difficult to mitigate. May include larger outdoor operations.
- Class 4: Operations with significant adverse effects that may be difficult to mitigate. May include larger outdoor operations.
- Class 5: Operations with the most significant adverse effects that may be difficult to mitigate. May include larger outdoor operations.

Additional characteristics to classify major facilities are provided in Table 3 of the proposed Guideline. It is noted that Table 3 does not provide specific characteristics for all five classifications, and represents a scaled approach to classify major facilities.

Increased Area of Influence and Minimum Separation Distance

The proposed Guideline presents increased distances for the AOI and MSD for each industrial facility classification. The AOI and MSD is typically measured as the actual distance between the property line of a sensitive land use and the property line of a major facility. The planning authority may allow measurement of the AOI or MSD from the major facility's building or equipment that is the actual source of adverse effects, as opposed to the property line. This method does not take into account any future expansions or future outdoor works, and should only be applied if the planning authority and major facility are agreeable and if future expansions to the major facility are not expected.

The below table (Table 1) demonstrates the increased distances for MSD and AOI, and compares the existing distances in the D-6 Guideline (Compatibility between Industrial Facilities) and the proposed Land Use Compatibility Guideline. As provided in the Land Use Compatibility Guideline, sensitive land uses should not be located within the MSD.

Table 1 – Current and Proposed Minimum Separation Distances

Major Facility Classification	Current Minimum Separation Distance (D-6 Guideline)	Proposed Minimum Separation Distance (Land Use Compatibility Guideline)	Increase
Class 1	20 metres	200 metres	180 metres
Class 2	70 metres	300 metres	230 metres
Class 3	300 metres	500 metres	200 metres
Class 4	N/A	500 metres	N/A
Class 5	N/A	500 metres	N/A

Table 2 – Current and Proposed Areas of Influence

Major Facility Classification	Current Area of Influence (D-6 Guideline)	Proposed Area of Influence (Land Use Compatibility Guideline)	Increase
Class 1	70 metres	500 metres	430 metres
Class 2	300 metres	750 metres	450 metres
Class 3	1,000 metres	1,000 metres	0 metres
Class 4	N/A	1,500 metres	N/A
Class 5	N/A	2,000 metres	N/A

Land Use Compatibility Studies, Demonstration of Need

If a land use proposal would place a new or expanding sensitive land use within a major facility's AOI, or a new or expanding major facility would capture sensitive land uses

within its AOI, a compatibility study will be required. If a new or expanding sensitive land use is proposed within a major facility's MSD or a new or expanding major facility would result in sensitive land uses within its MSD, compatibility studies and mitigation measures to address potential adverse effects on sensitive land uses and potential impacts to major facilities will be required. A demonstration of need will also be required if the proposed land use is a sensitive land use within the MSD of an existing or planned major facility.

The requirement for a demonstration of need is a new requirement of the proposed Land Use Compatibility Guideline.

Implementation through Official Plan Provisions

The proposed Guideline contains direction for planning authorities to address land use compatibility through official plan policies and procedures, planning tools and proponent-driven planning applications. The Guideline notes that the Official Plan should be the first mechanism used to implement compatibility policies, and recommends the incorporation of AOIs and MSDs and their related policies. The Guideline also recommends that Official Plans make specific reference to provincial guidelines, standards and procedures for land use compatibility. It is recommended that Official Plans include compatibility studies as part of a complete application when development is proposed within an AOI; and specifically requiring a demonstration of need as part of a proposal for a sensitive land use when mitigation measures are required for the development within an AOI and when the development is proposed within the MSD. The Guideline notes that, in two-tier municipalities (upper-tier and lower-tier), both levels need to have policies supporting early consideration of land use compatibility. Official Plans should identify or designate areas with existing or planned major facilities and identify associated AOIs and MSDs for these facilities; this can be demonstrated on a land use schedule, possibly as an overlay.

Identified Implications and Concerns

Regional staff have noted a number of recommendations, and items of concern or implication to anticipated and proposed development, in response to the proposed Land Use Compatibility Guideline. While more information on these items is detailed in Appendix 1, a list of the items has been provided below.

1. **Change from a Guideline to Official Plan Policy Directive:** resulting in potential impacts to the Region's MCR submission, and inflexibility in mapping (to demonstrate the AOI and MSD) as recommended in the Guideline.

2. **Municipal Comprehensive Review Timeline:** the Guideline requires planning authorities to identify, evaluate and develop alternate AOIs as part of the MCR, which may impede the Region in meeting the Provincial conformity deadline.
3. **Industrial Classification Language:** the Guideline utilizes subjective language such as “moderate” and “significant” to classify major uses. These terms are open to interpretation, and staff has concerns with consistent application and opinion on major facility classifications.
4. **Classification and Characteristics of Major Facilities:** the Tables provided in the proposed Guideline does not provide for clear reading or understanding of the characteristics of major facilities. Recommended that the Province consider utilizing the North American Industry Classification System (NAICS) to support major facility classification.
5. **Significant Increase in the MSDs and AOIs:** the increases in AOI and MSD may impact a number of strategic growth areas in the Region, including Major Transit Station Areas and development undergoing the approval process.
6. **Demonstration of Need:** the Guideline introduces that a demonstration of need is required, generally, when sensitive land uses are proposed within the MSD of a major facility. The Guideline does not outline who is qualified to prepare an MSD or criteria to evaluate the assessment.
7. **Transition Clauses:** the Guideline does not include a transition or sunset clause that recognizes existing and planned sensitive land uses prior to the implementation date. Staff has concerns regarding the implementation of the Guideline, upon finalization by the Province, and the ways in which this may impact ongoing, long-term, development proposals.
8. **Distances Measured from Property Boundary:** the Guideline requires that distances for MSD and AOI are measured from the property line or the building envelope of the major facility, and has eliminated the ability to measure these distances from site-specific zoning. The Province is encouraged to re-consider permissions to measure setbacks from site-specific zones.
9. **Applicability to Agriculture-Related and On-Farm Diversified Uses:** the Guideline notes that its provisions do not apply to agricultural operations; Regional staff wish to clarify whether agricultural operations include agriculture-related and/or on-farm diversified uses, which may be industrial in nature.
10. **Application to Cannabis Production Facilities:** the Guideline classifies cannabis production facilities within the settlement area boundary (i.e. urban

area) as a Class 5 industrial use, with significant AOI and MSD. Given that the Guideline does not apply to agricultural operations, which can include cannabis production facilities, staff are concerned that this classification creates two sets of rules for the same use.

11. **Consultation with Industry:** the Guideline places significant importance on engagement from and with major facilities; staff are supportive of this direction and recommend that the Guideline clearly outline the benefits of early and continued engagement to both proponents of new or expanding sensitive land uses and new or expanding major facilities.
12. **Transitional Uses:** the Guideline recommends that commercial or office uses be applied as transitional uses between major facilities and sensitive land uses. Staff are concerned that the implementation of commercial or office spaces as transitional uses will impact the ability of the Region and local area municipalities to achieve complete communities.
13. **NPC-300 Class 4 Designation and Land Use Compatibility Guideline:** Regional staff are concerned that the proposed significant increase in the MSD and AOI will result in increased requests of the planning authority to consider the application of Class 4 designation, per NPC-300. Staff are of the opinion that the proposed Land Use Compatibility Guideline could benefit from additional clarification regarding NPC-300 and the proposed provisions, as it is anticipated that many proponents will request the implementation of a Class 4 designation.

Alternatives Reviewed

The purpose of this report is to provide a summary of the proposed Land Use Compatibility Guideline as well as provide the Staff comments that were submitted to the Province on July 2, 2021.

Relationship to Council Strategic Priorities

Businesses and Economic Growth

The proposed Land Use Compatibility Guideline will impact the way in which Niagara Region conducts its planning function, to promote and improve interactions with proponents of major facilities early on in the planning approvals process.

Healthy and Vibrant Community

The intent of the proposed Land Use Compatibility Guideline is to ensure suitable setbacks between major facilities and sensitive land uses to ensure that compatibility is achieved. With compatibility being achieved, planning in Niagara can continue to result in the development of healthy and vibrant communities.

Other Pertinent Reports

N/A

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Appendices

Appendix 1 Niagara Region's submission: Proposed Land Use Compatibility Guideline (ERO 019-2785)