

Policy and Forms Impact Analysis (PFIA)

Policy/Guide <input checked="" type="checkbox"/> Form <input type="checkbox"/> Other <input type="checkbox"/> (please specify):
Title of Policy/Guide/Form: Land Use Compatibility Guideline
Ministry: Environment, Conservation and Parks Date prepared: February 22, 2021

Background

Context
<p>We are proposing a Land Use Compatibility Guideline (the Guideline) to replace several existing D-Series Guidelines that will assist municipalities and other land use planning authorities plan sensitive land uses and major facilities to avoid or minimize and mitigate potential adverse effects.</p> <p>This proposed Guideline would support implementation of the Provincial Policy Statement, 2020 (PPS). The PPS includes policies directing land use planning authorities, such as municipalities, to avoid, or if avoidance is not possible, minimize and mitigate land use compatibility concerns between major facilities (e.g. industrial uses) and surrounding sensitive land uses (e.g. residences) related to noise, odour and other contaminants and potential impacts to industrial, manufacturing or other uses. Similar policies are in a Place to Grow: A Growth Plan for the Greater Golden Horseshoe, 2020.</p> <p>The Guideline would apply when an approval under the <i>Planning Act</i> is needed for:</p> <ul style="list-style-type: none"> • a new or expanding sensitive land use (e.g. a residential subdivision or condominium) 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. <p>Municipalities and other planning authorities should use the Guideline when incorporating land use compatibility policies and principles into various land use planning tools under the <i>Planning Act</i> and other legislation.</p> <p>Impacts on sensitive uses from major facilities when land use compatibility is not properly considered may be due to dust, odour, noise, and vibration, and can vary from negligible to more significant adverse effects affecting health and the environment. Inadequate consideration of land use compatibility may also affect a major facility if they are required to implement measures to mitigate impacts on new sensitive uses at their cost.</p>

The Guideline provides implementation approaches and tools to ensure compatibility, based on the following general approach:

- Compatibility studies are required for new or expanding sensitive land uses and major facilities proposed within an Area of Influence (AOI) of a major facility. An AOI is the distance around a facility where complaints or adverse effects may be anticipated;
- Compatibility studies identify specific separation distances to prevent potential adverse effects to sensitive land uses and/or impacts to industrial, manufacturing or other uses. If separation distances alone are not enough to prevent potential adverse effects and/or impacts, then mitigation measures are also identified;
- Minimum separation distances (MSDs), much smaller areas within which adverse effects are highly likely to occur, are provided in the Guideline. New incompatible land uses should not be located within the MSD of a major facility;
- A demonstration of need would be required for proposed sensitive land uses located in the AOI if mitigation measures are needed to address anticipated adverse effects and if the proposal is within the MSD. Mitigation measures are required for sensitive land use and major facility proposals located within an MSD; and
- A demonstration of need determines whether there is an identified need for the proposed use in the proposed location and evaluates alternative locations for the proposed use if avoidance is not possible.

Costs and Benefits

Baseline Scenario	New Scenario
<p>Compatibility Studies</p> <p><u>Quantity</u> It is unknown how many proposed major facilities and sensitive land uses are required to complete a compatibility study under the current D-series guidelines each year as part of planning approvals. Planning authorities may have information on the number of projects that submit compatibility studies as part of planning approvals each year.</p> <p><u>Frequency</u> If a compatibility study is required for a proposed major facility or sensitive land use, it is only required once during planning approvals.</p> <p><u>Cost</u> The costs to complete compatibility study, when required under the D-series Guidelines, is variable based on the specifics of a</p>	<p>Compatibility Studies</p> <p><u>Quantity</u> The number of proposed major facilities and sensitive land uses that will require a compatibility study is anticipated to slightly increase from the amount that is required under the current D-series Guideline, but an estimate of this increase is not known. The proposed Guideline generally increases the area (AOI and MSD) where land use compatibility studies may be required relative to the current guideline. This increase is based on 10 years of MECP’s documented complaint data for noise, dust and odour. It is not known how many sensitive land uses or major facilities will be proposed within this increased area in a year.</p> <p>The Guideline also provides some flexibility that could decrease the amount of compatibility studies required by proponents of</p>

<p>proposal, including the scale of the development and potential adverse effects (dust, noise, odour and vibration). It is estimated that the costs to complete a compatibility study, when required, ranges from \$0 - \$50,000. For example, the costs may be zero if the proposal is barely within the AOI and the major facility has low dust, noise or odour potential. The costs become higher if the proposal is fully located within the AOI and there is high potential for several types of adverse effects (e.g. noise, dust, and odour effects). For example, estimated costs for components of a compatibility study for a sensitive land use being proposed near a major facility could include:</p> <ul style="list-style-type: none"> • Dust study: up to \$5,000. • Odour study: \$0 – 30,000. • Noise study: \$7,000 – \$15,000. <p>Each year, MECP receives thousands of complaints related to noise, dust and odour from sensitive land uses. There may be costs for major facilities to address complaints related to incompatible land uses, such as making changes to its operation (e.g., scale or timing of operations), developing and implementing a best management practice plan that can cost thousands of dollars, or installing end-of-pipe odour controls that can cost millions of dollars. The estimated annual costs for major facilities to address land use compatibility complaints is not known.</p> <p>The D-series guidelines include limited and dated information on expected contents of compatibility studies and there may be administrative costs for planning authorities and proponents of sensitive land uses to address incomplete or insufficient compatibility studies submitted as part of planning approval applications. The estimated annual costs for addressing incomplete or insufficient compatibility studies is not known.</p>	<p>proposed sensitive land uses and major facilities in the increased AOI, such as:</p> <ul style="list-style-type: none"> - If a proponent can locate a proposed major facility or sensitive land use outside of an AOI, a compatibility study would not be required. - The proposed Guideline also allows the use of a specific facility AOI that may be smaller than its associated Class AOI and the development of an alternate AOI by a planning authority, which provides some flexibility for proponents to avoid the requirement to complete compatibility studies altogether. <p><u>Frequency</u> The frequency will not change with the proposed Guideline. Any one project would complete a compatibility study once.</p> <p><u>Cost</u> The costs to complete compatibility studies are not expected to change under the proposed Guideline (e.g., \$0 - \$50,000).</p> <p>An increased AOI may result in costs for proponent of sensitive land uses proposed near major facilities to prepare compatibility studies but it should decrease the amount of land use compatibility complaints received by/about major facilities from nearby sensitive land uses and the costs for major facilities to retroactively address these complaints. It is estimated that retroactive mitigation measures are more costly than upfront mitigation measures, such as those identified in compatibility studies, due to poor planning and rushed decision making. It is estimated that the savings for major facilities to address land use compatibility complaints will be greater than the costs for proponents of sensitive land uses to prepare compatibility studies and costs for upfront mitigation measures. An estimate of these cost savings is not known.</p> <p>The Guideline is expected reduce administrative costs for planning authorities and proponents of sensitive land uses and major facilities in addressing incomplete or insufficient compatibility studies in planning</p>
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	<p>applications as it provides clarity on requirements for compatibility studies. The Guideline clarifies that in some situations, previously prepared technical studies for other approval applications, such as environmental compliance approvals, could be used for land use compatibility studies and vice versa. This should reduce administrative duplication and costs associated with preparing land use compatibility studies and studies required for other approvals. The estimated administrative cost savings is not known.</p>
<p>Change in compliance costs or cost-savings</p>	
<p>Average annual compliance costs (+) or cost savings (-): \$ Unknown/ neutral (\$0)</p> <p>While the average annual compliance costs is not known at this time, it is anticipated that added administrative costs to prepare compatibility studies in the expanded AOIs and MSDs would be offset by cost savings to address land use compatibility complaints related to noise, dust and odour, to address incomplete or insufficient compatibility studies submitted with planning applications, and in reducing duplication of technical studies required for multiple approvals, where appropriate. As part of consultation, MECP is encouraging comments on the potential impact of the Guideline and the broadened AOIs.</p>	

Regulatory Modernization Principles

<p>Regulatory Modernization Principles</p>	
<p><i>Principle</i></p>	<p><i>Explain how your proposal was developed to include each principle</i></p>
<p>1. Recognized standards or international best practices should be adopted.</p>	<p>The Guideline acts in concert with provincial noise, dust and odour guidelines, standards and procedures, and refers to these technical guidelines for further direction on undertaking compatibility studies, assessments and modelling.</p>
<p>2. Less onerous compliance requirements should apply to small businesses than to larger business.</p>	<p>The Guideline provides some flexibility for small businesses to addressing land use compatibility in planning approvals, such as the use of smaller, facility specific AOI instead of larger class AOIs to avoid preparing a compatibility study, if the proposal is located outside of the facility specific AOI.</p>
<p>3. Digital services that are accessible to stakeholders should be provided.</p>	<p>Once the Guideline is approved, it will be posted on MECP’s website for public</p>

	<p>access. While planning authorities, such as municipalities, determine how planning applications will be received from proponents, the Guideline encourages planning authorities to accept electronic compatibility studies, where feasible.</p>
<p>4. Regulated entities that demonstrate excellent compliance should be recognized.</p>	<p>The Guideline states that planning authorities and the Ministry have roles in ensuring compliance with conditions of planning approvals and environmental permissions, respectively. The <i>Environmental Protection Act</i> gives the MECP the authority to respond to concerns about impacts from land use compatibility issues (i.e. potential adverse effects) as appropriate. A risk-based approach is used by MECP to address known and potential violations of the law and risks to the environment or human health. Per its compliance framework, the Ministry may refer incidents related to compatibility issues that stem from planning decisions to a more appropriate level of government or agency (e.g. municipality).</p>
<p>5. Unnecessary reporting should be reduced and steps should be taken to avoid requiring stakeholders to provide the same information to government repeatedly.</p>	<p>The Guideline clarifies that in some situations, previously prepared technical studies for other approval applications, such as environmental compliance approvals, could be used for land use compatibility studies and vice versa.</p>
<p>6. An instrument should focus on the user by communicating clearly, providing for reasonable response timelines and creating a single point of contact.</p>	<p>The Guideline provides direction for proponents of major facilities and sensitive land uses to avoid (i.e., locate proposal outside of AOI and MSDs), or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants and potential impacts to industrial, manufacturing or other uses (e.g., prepare compatibility studies, assessment of need and implement mitigation measures). The Guideline clarifies the process, roles and responsibilities in addressing land use</p>

	<p>compatibility in planning approvals and the contents of compatibility studies.</p>
<p>7. An instrument should specify the desired result that regulated entities must meet, rather than the means by which the result must be achieved.</p>	<p>The Guideline specifies that the desired result is for major facilities and sensitive land uses to be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants and to minimize and mitigate any potential impacts to industrial, manufacturing or other uses.</p>