



Committed to Preserving the Rural, Heritage and Environmental Integrity of the Hamlet of Belfountain and its Environs

July 29th, 2021

Re: March 2021 Draft Land Use Compatibility Guidelines proposed by the Ministry of the Environment, Conservation and Parks (MECP)

Belfountain is a community located in Northwest Caledon in the Region of Peel. The Belfountain Community Organization represents the residents of the hamlet.

The MECP is currently considering changes to the Land Use Compatibility Guideline. Public comments to the proposed changes are invited until August 6, 2021 on the Environment Registry of Ontario: <https://ero.ontario.ca/notice/019-2785>

The Belfountain Community Organization's principal concern is the unwarranted exemption from application of the Area of Influence (AOI) and Minimum Separation Distance (MSD) in the Guideline to land use decisions for new or expanding aggregate operations proposed near sensitive land uses.

According to MOE's D-1-3 Land Use Compatibility (revised July 1995), **Land Use Compatibility, Amenity Area, Sensitive Land Use, Adverse Effect and Demonstration of Need** are defined as follows:

Land Use Compatibility – A recognized factor and principle of good planning, whereby land uses which are known or expected to cause environmental problems for one another, when in proximity, are deemed incompatible and are protected from one another by separation and/or other means.

Amenity Area – An outdoor space or facility that is used for the enjoyment of persons residing in or utilizing any building(s) on the property/premises.

Sensitive Land Use - A building, 'amenity area' or outdoor space where routine or normal activities occurring at reasonably expected times would experience 1 or more 'adverse effect(s)' from contaminant discharges generated by a nearby 'facility'. The 'sensitive land use' may be a part of the natural or built environment. Depending upon the particular 'facility' involved, a sensitive land use and associated activities may include one or a combination of:

- i. residences or facilities where people sleep (e.g. single and multi-unit dwellings, nursing homes, hospitals, trailer parks, camping grounds, etc.). These uses are considered to be sensitive 24 hours/day.
- ii. a permanent structure for non-facility related use, particularly of an institutional nature (e.g. schools, churches, community centers, day care centers).
- iii. certain outdoor recreational uses deemed by a municipality or other level of government to be sensitive (e.g. trailer park, picnic area, etc.).
- iv. certain agricultural operations (e.g. cattle raising, mink farming, cash crops and orchards).
- v. bird/wildlife habitats or sanctuaries.

Adverse Effect – Means one or more of:

- i. impairment of the quality of the natural environment for any use that can be made of it,
- ii. injury or damage to property or to plant or animal life,
- iii. harm or material discomfort to any person,
- iv. an adverse effect on the health of any person,
- v. impairment of the safety of any person,

- vi. rendering any property or plant or animal life unfit for use by man,
- vii. loss of enjoyment of normal use of property, and
- viii. interference with the normal conduct of business.

Demonstration of Need- A demonstration of need is an assessment that 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. This assessment is only required for proponents of sensitive land uses.

A demonstration of need is required to be carried out by a proponent of a sensitive land use when:

- a new sensitive land use is proposed within a major facility's AOI and mitigation measures would be needed to ensure no adverse effects or potential impacts; or
- a new sensitive land use is proposed within a major facility's MSD (regardless of whether mitigation measures are assessed to be needed or not).

The purpose of the March 2021 Draft MECP Land Use Compatibility Guideline and its application as a land use planning tool are described as follows:

1.1.1 Overview

This Land Use Compatibility Guideline (Guideline) has been developed to assist land use planning authorities and proponents of development in planning for land use compatibility which 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 primary purpose of the Guideline is to support the implementation of the Provincial Policy Statement, 2020 (PPS) issued under **Section 3** of the Planning Act, including policies 1.2.6.1, 1.2.6.2, 1.3.2.2 and 1.3.2.3 related to land use compatibility. It also supports land use compatibility-related policies in provincial plans, including those in A Place to Grow: A Growth Plan for the Greater Golden Horseshoe (A Place to Grow).*

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. The Guideline provides context on how land use compatibility is achieved through Ontario's land use planning process and the Environmental Protection Act (EPA) and regulations. It should also be used to inform Environmental Assessment (EA) processes carried out under the Environmental Assessment Act (EAA) and for compliance considerations.

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 Guideline will also be applied when municipalities are incorporating land use compatibility policies and principles into various land use planning tools under the Planning Act and other legislation.

2.6 Compatibility Studies

Compatibility studies assess potential adverse effects to sensitive land uses and impacts to major facilities and recommend separation distances and mitigation measures to prevent adverse effects or impacts to surrounding land uses.

Compatibility studies are required when:

- a new or expanding sensitive land use is proposed within a major facility's AOI (including MSD); or
- a new or expanding major facility is proposed to locate where there are existing or planned sensitive land uses within the AOI (including MSD) of the proposed major facility.

The information required to be reported in a demonstration of need must accompany the compatibility study and can be included as part of an existing municipal planning documents such as planning justification reports.

By all accounts, a new or expanding aggregate quarry operation, accompanied by blasting and dewatering below the water table, is the most obnoxious, toxic and environmentally destructive land activity, with no prospect of rehabilitation. This qualifies as a *Class 3 Major Facility*, which should be made subject to the following provisions:

- 1,000 metre area of influence (AOI) from existing or permitted sensitive land uses, and
- 500 metre minimum separation distance (MSD)

3. MINIMIZE and MITIGATE Impacts [p. 5]

- *If the separation distance is not possible, the compatibility study must identify mitigation measures to ensure no adverse effects will remain post-mitigation.*
- *Even with proposed mitigation, the separation distance should be maximized to minimize impacts, and should not be less than the MSD.* [underscoring added]
- *Once implemented, monitor and maintain required mitigation measures over time to avoid future compatibility issues.*

Where avoidance and minimization/mitigation of impacts is not possible, do not permit the proposed incompatible land use.

Despite the clear adverse effects, page 79 of the Draft Land Use Compatibility Guideline states that:

The AOI and MSD in the Guideline are not applicable to land use decisions for new or expanding aggregate operations proposed near sensitive land uses. Planning authorities are required to address land use compatibility with respect to new or expanding operations, as required by the PPS. [underscoring added]

- There is no logical basis for excluding aggregate operations from the Area of Influence (AOI) and Minimum Separation Distance (MSD) as provided for in the Draft Land Use Compatibility Guideline.
- *Adverse effects* as defined in the Environmental Protection Act are identical to those defined in the 2020 Provincial Policy Statement (Planning Act), and setback requirements under both *Acts* should be applied reciprocally.
- Existing sensitive receptors (often code for human targets) and sensitive land uses with “as-of-right” development potential have the same right to be protected from the adverse effects from new aggregate operations or the expansion of existing aggregate operations.
- Quarries are the most obnoxious, toxic and destructive use of land (with no prospect of rehabilitation), and blasting, an ultrahazardous activity, has many adverse effects, including flyrock an acknowledged contaminant, both environmentally (health and safety) and in terms of land use compatibility (quality of life, use and enjoyment, etc.)
- Applying reciprocal setbacks to sensitive land uses and new or expanded aggregate operations will reduce the number of complaints and lawsuits over adverse effects occasioned by incompatible land uses.

That AOI and MSD Land Use Compatibility Guidelines should be applied to all land uses reciprocally is a policy that MOE articulated when it addressed the House Quarry application. A review of the House Quarry Application, Township of Lake of Bays (File: Z39/05,^[1]) included an analysis of the Ministry of Environment Guidelines when considering a change in land use and the compatibility between industrial and sensitive land uses:

^[1].House Quarry Application, Township of Bays File: Z39/05

<https://static1.squarespace.com/static/5c59cf4c7a1fbd06dcdc52b6/t/5c6dff67f4e1fc98466d9c20/1550712680419/House+Quarry+Application+.pdf>

The Ministry of the Environment has two guidelines that are to be used by approval authorities (such as municipalities) when considering changes in land use, and particularly when determining the compatibility between different land uses - more specifically, between industrial and sensitive land uses such as residential. They are as follows: • D-1 Land Use Compatibility • D-6 Compatibility between Industrial Facilities and Sensitive Land Uses.

By letter dated October 9, 2003 Mr. Frank Wilson, Director, Northern Region of the Ministry of the Environment (MOE), wrote the following to members of the Peninsula Lake Association: [underscoring added]

“Since 1996, local planning authorities, such as municipalities or planning boards, have been delegated increased decision-making authority under the Planning Act. To assist these planning authorities in exercising their new decision-making responsibilities, provincial ministries have been transferring relevant data and information for their use, including the D Series Guidelines.

With respect to your question regarding rezoning applications to permit the development of new quarry operations, the MOE Procedure D-1-2 "Land Use Compatibility: Specific Applications" recommends that for new pits and quarry operations, the influence area is to be determined by appropriate studies (e.g., noise, dust, vibration, hydrogeological) carried out in support of the land use approvals. Under Municipal Plan Review, the approval authority is responsible for requesting these studies and determining the zone of influence. In organized areas, the approval authority rests with the municipality or planning board. In unorganized areas, the Ministry of Municipal Affairs and Housing in partnership with the MOE and the Ministry of Natural Resources is the approval authority.”

Ministry of Environment Land Use Guideline D-6 advises the Township to determine the minimum separation distance and potential area of influence for a Class III industrial use (such as a quarry) in the vicinity of sensitive land uses (such as homes and farms). It establishes the following parameters:

- 300 meters minimum separation distance to avoid incompatible uses; and*
- 1,000 meters potential area of influence for any adverse effects “to be identified, mitigation proposed and an assessment made on the acceptability of the proposal” (MOE, D-6, Appendix C).*

It is noteworthy that these distances apply regardless of whether it is a new sensitive land use proposed in the vicinity of an existing Class III Industrial Use such as a quarry, or whether it is a new quarry proposed in the vicinity of existing sensitive land uses. As a matter of good planning, the primary consideration should be to minimize conflicts between incompatible land uses, regardless of which exists and which is proposed. [underscoring added]

The Ministry of the Environment also requires that the developer enter into a binding legal agreement for any mitigation prior to the approval of the use (Ministry of the Environment Guidelines D-1-1, D-6).

As a result of the interpretation of the MOE D-6 Guidelines provided by the Ministry of Environment, the Planner that reviewed the House Quarry Application (Class III Industrial Use) made the following observations and recommendation:

I would note that Section E.38 of the Lake of Bays Official Plan specifies that a 300 meter setback from a pit or a 500 meter setback from a quarry use is required, subject to studies, when considering new sensitive land uses. If a sensitive use is proposed to be located within the stated setbacks, then an “impact assessment” should be prepared to evaluate the presence and impact of any adverse effects. It appears that the intent of this policy is to be consistent with the Ministry of the Environment D-6 Guidelines. However, because Policy E.38 applies only where new sensitive land uses are proposed near an existing quarry, and not in the opposite scenario, in my opinion the policy is in fact inconsistent with the MOE Guidelines to that extent, and the Township’s Official Plan policy should be amended accordingly as soon as possible. [underscoring added]

As noted in the May 7, 2020 MHBC Mineral Aggregate Land Use Compatibility Report,¹ the AOI (Area of Influence) with respect to Land Use Compatibility must be applied reciprocally.

Township OP policy 6.20 describes the ‘influence area’ as a land use planning concept to protect from incompatible land uses occurring in close proximity to each other. The concept is supported by distances

¹ <https://www.southfrontenac.net/en/open-for-business/resources/Current-Planning-Applications/S-10-20-S-K.-Mulrooney-Trucking-Ltd.-Beach---Mineral-Aggregate-Study.pdf>.

specified in OP policy 5.5.2, and is applied when a sensitive land use such as residential, is proposed in proximity to aggregate uses and, when the converse situation applies [p. 4]. [underscoring added]

In *Miller Paving Ltd. v. McNab/Braeside (Township)*, [Oct 27, 2015], PL130785, the OMB commented on the reciprocal nature of setbacks as applied to residences and quarries:

[68] Ministry rules on separation distances, between quarries and residences, specify that quarries cannot come closer than a given distance from residences and residences cannot come closer than a given distance from residences – but inversely, residences similarly cannot come closer to quarries. Other governing documents say likewise. [underscoring added]

In *Carlyle Development v. Baldwin (Township)*,² which involved an application to permit development of a quarry, the Ontario Municipal Board (now LPAT) addressed the issue of reciprocal setback requirements:

[15] Regarding whether para. E.10.2 of the Official Plan applies to the zoning of lands for new quarries, the Township argued that the object and intent of the Official Plan is to protect against incompatible land uses and that para. E.10.2 should apply both to applications for zoning near existing quarries and to applications for new proposed quarries near existing sensitive land uses. It referred to *Capital Paving Inc. v. Wellington (County)*, [2010] O.M.B.D. No. 9 in which the Board addressed the application of what is now para. 1.2 of the Provincial Policy Statement, 2014 (the “PPS”) on the buffering of resource extraction activities and “sensitive land uses” from each other and coordination of uses to prevent adverse effects. The Board stated at para. 16 that:

While residential sensitive uses would be restricted in locating near to existing aggregate operations and in the area of known deposits, the PPS also provides protection in buffering and separation when the residential use is in place first....It is fair to say that the PPS speaks to the incompatibility of sensitive residential use with earlier aggregate operations and the reverse is also true that a proposed pit may be incompatible with the prior residential use. [underscoring added]

[18] The Township referred to *2220243 Ontario Inc. v. Halton (Regional Municipality)*, [2015] O.M.B.D. No. 418 (“2220243 Ontario”), where the Board interpreted para. 2.5.2.1 of the PPS. The Board stated at para. 41:

The “as is realistically possible” approach means addressing competing interests of many stakeholders, one of which is the aggregate industry. With respect, it would be an over-simplification of the policy and an error of interpretation in my estimation to suggest that “as is realistically possible” only includes the physical existence of the aggregate resource. [underscoring added]

Based on an analysis of the Draft Land Use Compatibility Guideline by Mark Dorfman, the Township of Ramara made the following recommendations to the Ministry of Environment, Conservation and Parks (MECP):

1. That the Land Use Compatibility Guideline should apply to new or expanding Aggregate Operations that are near existing and planned Sensitive Land Uses, as well as new or expanding Sensitive Land Uses.
2. That the Minimum AOIs and the Minimum MSD should apply where there are new or expanding Aggregate Operations near existing or planned Sensitive Land Uses, as well as new or expanding Sensitive Land Uses.
3. That if the Municipality is required to undertake a Compatibility Study, the Municipality should not be required to pay for the total cost of a Compatibility Study where there are planning applications for new or expanding Aggregate Operations and new or expanding Sensitive Land Uses.
4. That if the Municipality is required to undertake a Demonstration of Need Study, the Municipality should not be required to pay for the total cost of a Demonstration of Need Study for proposed Sensitive Land uses in the AOI and MSD of the existing Aggregate Operations.

² *Carlyle Development Corp. v Baldwin (Township)*, 2017 CanLII 31075 (ON LPAT), <<https://canlii.ca/t/h3x73>>, retrieved on 2021-07-08.

5. That if the Municipality is required to pay for the required Compatibility and Need Studies, it is appropriate that the Municipality may deny the acceptability of planning applications.
6. That the Land Use Compatibility Guideline shall be used by the Municipality to assess the appropriateness of licence and planning applications under the Aggregate Resources Act and the Planning Act and approve or deny according to good planning, conformity and consistency.

In June 2021, the Registered Professional Planners Institute issued an Advisory to Members that addresses “The Issue of Quarry Fly Rock,” a copy of which is available at <https://ontarioplanners.ca/OPPIAssets/Documents/Policy-Papers/OPPI-Fly-Rock-Public-June-2021.pdf>.

An extract from the Advisory to Members states:

On January 1, 2022, Rule 22 of subsection 0.13 in Ontario Regulation 244/97 of the Aggregate Resources Act, comes into effect. It stipulates that the licensee of an aggregate quarry shall ensure that the quarry is in compliance with the Rule as follows:

a licensee shall take all reasonable measures to prevent fly rock from leaving the site during blasting if a sensitive receptor is located within 500 meters of the boundary of the site.

Fly Rock discharge from quarry blasting is a contaminant as determined by the Supreme Court of Canada. It is likely to cause an adverse effect under the Environmental Protection Act.

Members of OPPI are advised to also consider the directions provided under Policy 1.2.6 under Provincial Policy Statement 2020 to establish the appropriate municipal planning policies as a preventative measure to achieve land use compatibility between quarries that undertake blasting and sensitive land uses.

Recommendations to MECP

On the basis of the research and analysis conducted, we respectfully request,

- that the MECP remove the unwarranted exemption from application of the Area of Influence (AOI) and Minimum Separation Distance (MSD) in the Guideline to land use decisions for *new or expanding* aggregate operations proposed near *sensitive land uses*.
- that MECP acknowledge “flyrock” (the ultimate adverse effect of blasting quarry operations) as a contaminant, pursuant to the 2013 Supreme Court of Canada ruling in *Castonguay Blasting Ltd. v. Ontario (Environment)*;³ and
- that MECP’s AOI (Area of Influence) and MSD (Minimum Separation Distance) apply to all major facilities, including new and expanding quarry operations, and sensitive land uses.

Please acknowledge receipt of this letter.

Respectfully submitted,

Judy Mabee-
President, Belfountain Community Organization

Attachments: *The Issue of Quarry Fly Rock (June 2021)*, Advisory To Registered Professional Planners prepared by Mark L. Dorman, RPP and George McKibbin RPP

Mark L. Dorman, Planner Inc. June 21, 2021 Report to Township of Ramara Committee of the Whole

Website - Belfountain.ca **Facebook** - <https://www.facebook.com/BelfountainCommunity/> **Twitter** - <https://twitter.com/Belfountainca>

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³ *Castonguay Blasting Ltd. v. Ontario (Environment)*, 2013 SCC 52 (CanLII), [2013] 3 SCR 323, <<https://canlii.ca/t/g1038>>, retrieved on 2021-07-12