

Report To:	Regional Chair and Members of Regional Council
From:	Bob Gray, Commissioner, Legislative and Planning Services and Corporate Counsel
Date:	June 16, 2021
Report No:	LPS57-21
Re:	Provincial Consultation on Proposed Land Use Compatibility Guideline and Proposed Guideline to Address Odour Mixtures in Ontario

RECOMMENDATION

1. THAT Regional Council endorse Report No. LPS57-21 re: “Provincial Consultation on Proposed Land Use Compatibility Guideline and Proposed Guideline to Address Odour Mixtures in Ontario” as the basis to prepare a submission by the Province’s July 3, 2021 Environmental Registry deadline.
2. THAT the Regional Clerk forward a copy of Report No. LPS57-21 to the Ministry of Municipal Affairs and Housing, the Ministry of Environment, Conservation and Parks, the City of Burlington, the Town of Halton Hills, the Town of Milton, the Town of Oakville, Conservation Halton, Credit Valley Conservation Authority, the Grand River Conservation Authority, the Niagara Escarpment Commission, the Association of Municipalities of Ontario, and Halton’s Members of Provincial Parliament for their information.

REPORT

Executive Summary

- On May 4, 2021, the Ministry of the Environment, Conservation and Parks (MECP) posted proposals on the Environmental Registry of Ontario related to proposed guidelines for land use compatibility and odour (ERO Numbers [019-2785](#) and [019-2768](#)) entitled “Land Use Compatibility Guideline” and “Guideline to address Odour Mixtures in Ontario” (Attachment #1).
- The proposed Land Use Compatibility Guideline is intended to assist municipalities in planning for sensitive land uses and major facilities. The Guideline is proposed to replace a number of the existing D-series environmental land use planning

guidelines that address land use compatibility when making land use planning decisions.

- The proposed Odour Guideline provides technical requirements and tools for the Ministry, planning authorities, proponents and/or owners and operators of sensitive land uses and major facilities. The Province has indicated that the guidance would help ensure there is less regulatory uncertainty for facilities, better coordination with land use planning decisions, and more effective remediation of issues caused by odour mixtures. This guideline will support and link to the separate Land Use Compatibility Guideline.
- The proposal is open for a 60-day public consultation period ending on July 3, 2021, which is prior to Regional Council's next meeting on July 14, 2021.
- In order to meet the Province's commenting deadline, staff recommend that Regional Council endorse this report as a basis for staff to prepare a more detailed submission to the Province in response to the proposals.

Background

Land use compatibility is an important component of the land use planning system in Ontario. As communities grow and evolve, changes in land use must remain compatible with existing and planned land uses. Major facilities and sensitive land uses need to be planned and developed to avoid adverse impacts on one another to ensure the continued viability of employment areas that contribute to economic prosperity and to ensure the continued enjoyment and functionality of sensitive land uses such as residential uses.

In the 1990s, the Ontario Ministry of the Environment released the D-Series environmental land use planning guidelines to guide and direct municipalities when they are assessing land use compatibility during the development of Official Plan policies and provisions in Zoning By-laws. The guidelines are also used for development applications that require the re-designation or rezoning of land uses where major facilities and sensitive land uses have the potential to adversely impact one another.

On May 4, 2021, the Ministry of the Environment, Conservation and Parks released a Proposed Land Use Compatibility Guideline and Proposed Guideline to Address Odour Mixtures in Ontario. The Province is also consulting on updates to the MECP environmental compliance policies (ERO Number 019-2972). However, these changes do not directly impact Regional policies and processes and are not summarized in this report.

The Proposed Land Use Compatibility Guideline provides guidance on a number of considerations including when a compatibility study would be required and specific guidance on assessing and preventing impacts from noise, dust, odour, and other potential adverse effects to sensitive land uses and major facilities. The proposed Guideline would apply when an approval under the *Planning Act* is required for a new or

expanding sensitive land use that is proposed near an existing or planned major facility, or when a new or expanding major facility is proposed near an existing or planned sensitive land use.

The proposed Land Use Compatibility Guideline would replace the following guidelines from the D-series environmental land use planning guides:

- D-1 Land Use Compatibility
 - D-1-1 Land Use Compatibility: Procedure for Implementation
 - D-1-2 Land Use Compatibility: Specific Applications
 - D-1-3 Land Use Compatibility: Definitions
- D-2 Compatibility Between Sewage Treatment and Sensitive Land Use
- D-4 Land Use on or Near Landfills and Dumps
 - D-4-1 Assessing Methane Hazards from Landfill Sites
 - D-4-3 Registration or Certificates and Provisional Certificates
- D-6 Compatibility Between Industrial Facilities
 - D-6-1 Industrial Categorization Criteria
 - D-6-3 Separation Distances

It is noted that the 'D-3 Environmental Considerations for Gas or Oil Pipelines and Facilities' and 'D-5 Planning for Sewage and Water Services and its subsections' guidelines are not being replaced and that the 'D-4-2 Environmental Warnings/Restrictions' and 'D-6-4 MCCR Bulletin No. 91003 (Environmental Warnings/Restrictions on Property)' were previously replaced by the '2009-04 Environmental Warnings and Restrictions' document.

The Provincial Policy Statement, 2005 (PPS, 2005) directed that major facilities and sensitive land uses should be planned to prevent or mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term viability of major facilities. Since the PPS, 2005, the Province has strengthened its approach to land use compatibility with the PPS, 2020 establishing a decision-making hierarchy whereby planning authorities are required to plan for major facilities and sensitive land uses to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects between incompatible land uses. The PPS, 2020 also introduced criteria for assessing a proposal for sensitive land uses where avoidance of any potential adverse effects on major facilities is not possible. The criteria require that (1) there is a demonstrated need for the proposed use; (2) there are no reasonable alternative locations for the proposed use; (3) adverse effects to sensitive land uses and potential impacts to major facilities are minimized and mitigated.

Major facilities are defined in the PPS, 2020 as:

“facilities which may require separation from sensitive land uses, including but not limited to airports, manufacturing uses, transportation infrastructure and corridors, rail facilities, marine facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities.”

The decision-making hierarchy in the PPS, 2020 is reflected in the proposed guideline as well as requirements for a demonstration of need assessment and direction on incorporating land use compatibility considerations into planning tools including official plans and zoning by-laws. The proposed Land Use Compatibility Guideline is applicable when approval under the *Planning Act* is required for a new or expanding sensitive land use that 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.

In addition to the release of the proposed Land Use Compatibility Guideline, the Ministry also released a proposed Odour Guideline. Section 5 of this guideline provides guidance on how to assess potential odour impacts from major facilities on sensitive land uses through the land use planning process. The Land Use Compatibility Guideline is intended to be read first before referencing the Odour Guideline.

The existing Regional Official Plan (ROP) has direction related to land use compatibility for area-specific plans (or secondary plans), employment areas, and protection of mineral aggregate operations from incompatible land uses. The ROP also has requirements for proponents of sensitive land uses near industrial, transportation, and utility sources to undertake studies in accordance with the Region's Land Use Compatibility and Air Quality Guidelines.

Through the ongoing Regional Official Plan Review (ROPR), staff will be updating the ROP to be consistent with and conform to the PPS, 2020 and Growth Plan, 2019 policies for land use compatibility. The proposed guideline provides helpful guidance to planning authorities on how to address land use compatibility in official plans and leverage the available planning tools under the *Planning Act*. They will be especially useful as the Region looks to address land use compatibility through the ROPR. Policies to achieve land use compatibility between major employment uses and sensitive land uses within or adjacent to Strategic Growth Areas are proposed in draft Regional Official Plan Amendment No. 48 (ROPA 48).

Discussion

Overview of Proposals

The proposed Land Use Compatibility Guideline provides a summary of the Provincial policy 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 land uses. The Guideline provides more direction to planning authorities on how to address land use compatibility in accordance with this framework. This includes:

- A shift from a three class to five class system for classification of major facilities;
- Increases to area of influence (AOI) and minimum separation distance (MSD) standards;

- Additional guidance on the requirements for compatibility studies;
- Requirement for a demonstration of need assessment for proposed sensitive land uses; and
- Additional direction on consideration of cumulative impact and transitional land uses.

The proposed Odour Guideline provides guidance on how to assess potential odour impacts from major facilities at sensitive land uses as part of a compatibility study required in the land use planning processes. It outlines steps to determine when an odour compatibility study is required and tools that can be used for the assessment.

Regional Submission

The 60-day commenting period has precluded a joint Halton Area Planning Partnership submission, however Regional staff have consulted with our Local Municipal partners to consider alignment of responses to the proposals.

Regional staff are generally supportive of most aspects of the proposed guidelines. In particular, the consolidation of the land use compatibility guidance into one comprehensive document provides a streamlined approach for planning authorities and proponents to identify and address land use compatibility requirements. The guideline is particularly relevant to Halton with respect to the guidance on planning for land use compatibility in areas of infill and intensification such as Major Transit Station Areas and with respect to the Region's employment area overlay.

Regional staff anticipate that comments on the proposal will focus on the proposed Land Use Compatibility Guideline due to its focus on providing guidance to planning authorities on incorporating land use compatibility into land use planning decisions.

Based on Regional staff's initial review of the proposed guideline, a submission to the Province is proposed to address and provide comments on the following:

- **Classification of Facilities and Identified Area of Influence (AOI) / Minimum Separation Distance (MSD):** The proposed guideline allows for easier implementation of AOI and MSD standards through the introduction of a detailed methodology for classifying major facilities into a finer grain five class system as well as assigning certain types of major facilities specific AOIs and MSDs such as composting facilities, meat processing facilities, and wastewater facilities. In conjunction with the update to the classification of facilities, the Ministry is proposing to substantially increase AOI and MSD standards based on analysis of the Ministry's complaint data related to noise, dust, and odour over a ten-year period. In the existing D-series guidelines MSDs range from 20m to 300m whereas in the proposed guideline they range from 200m to 500m. Further, in the existing guidelines AOIs range from 70m to 1000m whereas in the proposed guideline they range from 500m to 2000m.

The substantial increase to AOI and MSD standards will have an impact on how the Region approaches projects for major facilities (e.g. wastewater treatment plants) as well as on the planning for infill and intensification in the Region especially with respect to the area-specific planning for major transit station areas and other strategic growth areas where mixed-use development is contemplated. Regional staff will continue to review these changes and provide any necessary comments related to addressing land use compatibility in infill and intensification contexts such as potentially requesting additional guidance from the Ministry on what minimization and mitigation approaches may be most appropriate in these contexts as well as any comments on addressing projects for major facilities.

- **Implementation of Land Use Compatibility in Planning Tools and Potential for Enhanced Provincial Support:** The proposed guideline provides specific direction on how land use compatibility can be addressed in planning tools such as official plans. Regional staff are generally supportive of the guidance in this regard. However, the Ministry does indicate that official plans should identify or designate areas with existing or planned major facilities and identify the associated AOIs and MSDs for these facilities on a land use schedule. Regional staff have concerns with this suggestion as the land use schedule would become stale-dated quite quickly as facilities change, expand, or move throughout the Region. Regional staff will provide comments that speak to providing more flexibility in this guidance such as considering changing the direction to refer to an appendix to an official plan that would be able to be updated more frequently without requiring an amendment and/or considering a centralized Provincial database for the classification of facilities.

The Ministry already provides a database for environmental compliance approvals (ECAs) however, improvements to the user friendliness of the database to identify when an ECA is no longer active and to identify the classification of a facility would assist municipalities across the Province in the assessment of compatibility studies. As the Ministry already undertakes tracking of ECAs the requirement for municipalities to do similar tracking through the classification of facilities on a schedule in official plans may introduce duplication of work. Regional comments may consider requesting more guidance from the Ministry to understand how the requirement for a schedule in official plans fits in with the existing Provincial tracking of ECAs to avoid and reduce redundancy.

- **Applicability to Federal and Federally-regulated Facilities:** The proposed guideline introduces a new Ontario approach to federal or federally-regulated facilities such as airports, rail facilities, marine facilities, and oil and gas pipelines that is not consistent with the Provincial Policy Statement 2020. The PPS 2020 provides a two-way standard to address compatibility – i.e., on the one hand, new major facilities must be planned to ensure compatibility with existing or approved sensitive land uses and, on the other hand, new sensitive land uses must be planned to ensure compatibility with existing or approved major facilities. Without rationale, the Ministry guideline proposes to depart from the cabinet-approved

Provincial Policy Statement by including a novel one-way approach – that new sensitive land uses must be planned to ensure compatibility with existing or approved major federal facilities, but new major federal facilities need not be planned to ensure compatibility with existing or approved sensitive uses. There is no planning policy rationale for introducing this one-way approach and, nor is there any legal rationale for this change. In law, there is no blanket exemption of federal facilities from provincial or municipal law or standards.

Regional staff are of the opinion that these Ministry guidelines should not change the existing policy approved by cabinet in the PPS 2020. The siting of all new major facilities near sensitive land uses should be subject to this guideline. There should be zero tolerance for any “federally-regulated facility” claiming or receiving blanket exemption from the requirement to ensure compatibility through alternative designs, separation distances or mitigation. Therefore it is recommended in the strongest of terms that these guidelines should apply and will prove useful to ensure that new federally-regulated facilities adhere to Ontario’s existing two-way standards and approach to land use compatibility. This is incredibly important for achieving economic prosperity and ensuring protection of the people of Ontario against a range of impacts – including serious health impacts – due to incompatible land uses.

Conclusion

The comments contained in this report represent initial considerations on the Province’s proposed land use compatibility and odour guidelines. Regional planning staff are continuing to work with both internal stakeholders such as Public Works as well as our Local Municipal partners to consider alignment of responses to the proposals. Should Regional Council endorse this report, staff will generate a submission on the basis of this report on the proposals to be provided to the Province by the July 3, 2021 commenting deadline.

FINANCIAL/PROGRAM IMPLICATIONS

There are no direct financial implications associated with the recommendations contained in this report.

Respectfully submitted,



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Planning Official



Bob Gray
Commissioner, Legislative and Planning
Services and Corporate Counsel

Approved by



Jane MacCaskill
Chief Administrative Officer

If you have any questions on the content of this report,
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Attachments: None