



PLANNING & DEVELOPMENT

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TO: Warden and Members of Huron County Council – Day 1
FROM: Sandra Weber, Director of Planning and Development
DATE: July 7th, 2021
SUBJECT: **Comments on Proposed Updates to the Provincial Land Use Compatibility Guidelines**

RECOMMENDATION

RECOMMENDED MOTION:

THAT:

The Council of the County of Huron receive the report by Sandra Weber, Director of Planning and Development, dated July 7th, 2021, titled 'Comments on Proposed Updates to the Provincial Land Use Compatibility Guidelines'.

AND FURTHER THAT:

The report be forwarded to the Ministry of the Environment Conservation and Parks as the County of Huron's comments on the proposed changes to the Land Use Compatibility Guidelines (Environmental Registry posting #019-2785).

BACKGROUND

The Province has recently released proposed updates to the Provincial Land Use Compatibility Guidelines on the Environmental Registry for review and commenting. The proposed Guidelines would replace earlier Ministry of the Environment Conservation and Parks (MECP) D-Series Guidelines which address compatibility and separation distances between sensitive lands uses (e.g. residential and institutional) and major facilities (e.g. industrial, landfills, and major infrastructure facilities). This report provides an overview of the proposed changes to the Guidelines as well as recommended comments to be shared with the Province for their consideration prior to finalizing the Guidelines.

COMMENTS

Staff appreciate that the MECP is updating the Guidelines and the opportunity to review the proposed changes and provide comments. The current Guidelines were developed in the 1990's and have not been updated. These Guidelines are useful in implementing the Provincial Policy Statement and for working with developers early in the process to avoid land use compatibility issues in our communities.

The Guidelines propose to replace a number of the previous D-Series Guidelines, including the following:

- D-1 Land Use Compatibility,
- D-2 Compatibility between Sewage Treatment and Sensitive Land Use,
- D-4 Land Use On or Near Landfills and Dumps, and
- D-6 Compatibility between Industrial Facilities.

Guidelines D-3 Environmental Considerations for Gas or Oil Pipelines and Facilities and D-5 Planning for Sewage and Water Services are not proposed to be replaced at this time.

The objectives of the proposed consolidated and updated Land Use Compatibility Guidelines are to:

- Protect employment areas designated for future industry from incompatible uses and encroachment by sensitive land uses;
- Protect existing or planned industry and major facilities from potential impacts from new sensitive land uses; and
- Prevent adverse effects to existing or planned sensitive land uses from new and/or expanding industry and major facilities.

The Guidelines contain definitions which guide their interpretation and allow for both the required separation distances as well as outlining study areas (i.e. areas of influence).

“Area of Influence (AOI): an 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.

Minimum Separation Distance (MSD): 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.”

MSD’s represent the minimum setback required between a major facility and a sensitive land use. AOI’s are the area where a compatibility study would be required to determine if a new sensitive land use would be negatively impacted by an existing major facility. Compatibility studies may include assessments on noise, odour, dust, or other contaminants (e.g. methane or leachate from a landfill). The Guidelines also generally work in a reciprocal manner whereby a proposed major facility would be required to assess compatibility to existing sensitive land uses that are located within the AOI. There is one key area where the Guidelines would not be reciprocal. If a new sensitive land use is proposed in the AOI of a major facility it needs to complete a compatibility study as well as a demonstration of need study. However, if a new major facility is proposed in the AOI of a sensitive land use, it only needs to complete the compatibility study and not the demonstration of need study. The Minimum Separation Distances range from 100 metres to 500 metres depending on the type of industry or major facility and the Areas of Influence range from 300 metres to 2000 metres. It should be noted that indoor Cannabis production facilities that are located in a settlement area on lands that are zoned for Industrial uses; and all Cannabis processing facilities have been included as a Class 5 facility, with a proposed Minimum Separation Distance of 500 m and an Area of Influence of 2000 metres.

Municipalities are responsible for updating their planning documents such as official plans and zoning by-laws to ensure compliance with the Guidelines. Compatibility studies or demonstration of need studies are triggered by Planning Act applications such as site plan control, consents, minor variances, zoning/official plan amendments, and plans or subdivision or condominium. The requirement to complete compatibility or demonstration of need studies is required by proponents of new major facility or sensitive use developments. Municipalities are responsible for reviewing the studies.

Based on a review of the proposed Guideline changes, the following comments are suggested to be forwarded to the Ministry for consideration:

1. The wording of the Guidelines appears to be very rigid and leaves little room for site specific interpretation, or consideration of existing circumstances. For example, where there is a major facility surrounded by sensitive uses, there would appear to be little consideration given to the fact that those uses may already be co-existing without issues. If a new sensitive use were proposed within the MSD then it would not be permitted, or if it were proposed within the AOI then compatibility studies may be needed which may serve little purpose. Consideration should be given to either exemptions or factoring in circumstances such as existing development patterns in proximity to the proposed use. There is potential for MSD's and AOI's to potentially impact existing zoned development lands. The Province has noted that the Guidelines should not result in lands being rendered undevelopable i.e. the land in between an industrial use and a residential use could be used as commercial to provide a buffer between the major facility and the sensitive use. While this may be an option in some circumstances, it may not be viable in all cases, leaving the in between lands difficult to use efficiently or develop.
2. Further guidance should be provided for landfills (or dumps) which are closed and no longer in operation. In the proposed Guideline, the Minimum Separation Distance (MSD) and Area of Influence (AOI) around open and closed landfill sites would be fixed at 500 metres and the measuring methodology significantly changed (i.e. from property boundary rather than fill area). There does not appear to be a mechanism to reduce the area of influence or consider the landfill footprint size, location on the property, or age. This may have an effect on development in Huron County where closed landfill sites existing in settlement areas. In the current Guideline, the 500 metres was not a 'hard setback' in that if the proponent was able to demonstrate that their lands were free from leachate and methane gas migration within 500 metres of the former landfill or dump, then development could still be permitted. This change may negate the findings of former D-4 studies which have already been completed. This change has the potential to effect approximately 564 hectares (1350 acres) of land within the settlement areas of Huron County. Two maps are provided as examples of the effect on existing settlement areas from closed landfill sites.

It should be noted that this change also has the potential to restrict development in the agricultural areas in proximity to landfills e.g. new livestock barns.

3. It would be helpful for the Province to provide clarification on smaller scale industrial uses (e.g. home industries), or on-farm diversified uses in Agricultural areas, that may not warrant a full 'major facility' label and associated MDS and AOI setback and compatibility study requirements. The Province could consider a major facility designation for some industrial uses and a minor facility designation for others which do not have the same level of impact and therefore do not need to meet the stringent tests outlined in the Guidelines.
4. The Guidelines provide criteria for demonstration of need studies. Additional clarification on the requirements for these studies would be helpful as they are somewhat subjective in nature and will be difficult to evaluate. The test to look for other sites elsewhere could be difficult to definitively pass or fail in many circumstances.

5. Clear transition provisions will be helpful when the Guidelines are passed. Consideration of existing developments or applications in process should be considered, as well as existing zoning provisions that may / may not be negated by the requirements of the Guidelines. Flexibility should be permitted here, as municipalities work to update planning documents and make landowners aware of the new requirements.
6. Considerations should be given to the minor expansion of existing uses without the need for significant study i.e. adding a deck to a house which triggers a minor variance should not trigger the need for a compatibility study.
7. The Guidelines are clear that they do not apply to agricultural uses, but it would appear they do still apply to agriculture-related uses such as grain elevators or grain drying operations. Clarification on how this would apply to agriculture-related uses would be helpful.

Additional Comments from County Council (From July 7th, 2021 County Council – Day 1 meeting)

8. When setback distances and study requirements are increased, it pushes development outside of the established settlement areas, putting pressure on surrounding farmland. The goal is to protect agricultural lands and make the most efficient use of lands within settlement areas. Large setbacks will result in more restrictions and less development potential within established settlement areas. Increased separation distances and study costs may also deter housing developments during this current housing shortage in our communities.
9. With the Area of Influence and Minimum Separation Distances proposed to be established for Cannabis production facilities, it is requested that the Province clarify how the reciprocal distance would be applied for establishing new residences in proximity to already existing Cannabis facilities. If the 2000 metre distance applies, this would create new study requirements for entire settlement areas where these facilities already exist.

OTHERS CONSULTED

County Planning Directors, Grey County Planning Staff Report, Muskoka Staff Report

FINANCIAL IMPACTS

No direct implications to County budget, but future developments within the County may be impacted (e.g. costs, potential for inefficient use of land).



Sandra Weber
Director of Planning