

July 2, 2021

Sanjay Coelho
Ministry of the Environment, Conservation and Parks
Environmental Policy Branch
10th Floor, 40 St Clair Avenue West
Toronto, ON M4V 1M2

OPPI Comments on Proposed Land Use Compatibility Guideline (ERO 019-2785)

Dear Sanjay,

On behalf of the Ontario Professional Planners Institute (OPPI), I am pleased to provide our comments on the proposed Land Use Compatibility Guideline posted for consultation by the Ministry of the Environment, Conservation and Parks.

OPPI is the recognized voice of Ontario's planning profession. With over 4,000 members, it serves as both the Professional Institute and regulator of Registered Professional Planners (RPP) in the province. Our members work across the planning spectrum, for consulting firms, provincial and municipal approval bodies, private developers, community agencies and academic institutions.

RPPs are skilled, professional, and dependable navigators employed to help lead communities towards the Ontario of tomorrow. RPPs are the local experts who bring together differing points of view; they consult and develop recommendations that provide informed choices for decision-makers and elected officials. RPPs act in the public interest as professionals who work to improve the quality and livability of communities in Ontario today and for their sustainability long-term.

We are uniquely positioned to provide feedback on the proposed Guideline as our members are the experts on the ground with respect to planning approvals and policy implementation. Our comments are aimed at supporting planners as they implement the proposed Guideline in their daily work.

As a package, OPPI welcomes the updated Land Use Compatibility Guideline. The Guideline is a long awaited and necessary tool to help planners adequately protect the public interest in land use planning decisions.

However, OPPI has eight key points to raise for the Ministry's consideration as part of this consultation process.

1. The Ministry should provide further clarity in relation to the terms "worst case scenario" and "cumulative impact" as used under Section 4.2.3 Considerations for Infill and Intensification Scenarios of the Guideline.

This section of the Guideline provides key direction and recommendations for addressing compatibility of land uses outside of Areas of Influence (AOIs) and Minimum Separation Distances (MSDs). The proposed list of recommendations includes the following guidance:

- *“The zoning is use-specific (i.e., only the existing or proposed industrial or sensitive land use is permitted), or planning considerations are based on the **“worst case scenario”** based on permitted uses in the industrial zoning by-law.*
- *The cumulative effects of development are considered. For example, considering the potential implications of approving an additional industrial use near existing sensitive land uses may have a **cumulative impact** on the existing sensitive land uses.”*

The two bolded terms are central to the planning analysis of land use compatibility and achievement of good planning.

When the terms *“worst case scenario”* and *“cumulative impact”* apply, isopleth mapping is produced depicting contaminants which exceed Ontario Regulation 419 standards around facilities to enable decisions to be made concerning minimum separation distances. Similarly, decibel contour mapping can be produced for noise emissions.

Where the term *“cumulative impact”* is used, procedures are set out to ensure that noise and air emissions from the facility up for approval is considered, as well as facilities in close proximity, and that all point and fugitive sources and traffic sources (tailpipe and fugitive) on site and off are addressed.

However, the term *“cumulative impact”* has not been described in the proposed Guideline at all. The term *“worst case scenario”* is described under Section 2.3 but may need to be more clearly outlined in the document.

The Ministry should consider the following elements in ensuring these terms are appropriately explained to help planners implement the new Guideline:

1. Provide a clear definition.
 2. Outline how they are to be used.
 3. Specify the information proponents need to produce.
 4. Specify what information planners need to use in their application.
 5. Specify how planners might evaluate the application of these terms in compatibility analyses.
 6. Specify what standards should be applied to the results to ascertain acceptability.
 7. Clarify that the Compatibility Study is to be prepared by the proponent of the sensitive land use.
- 2. The Ministry should provide further direction with respect to the scenarios where major facilities have site-specific air standards.**

Appendix B of the Guideline includes recommendations on where site specific and technical standards (Ontario Regulation 419) and sector specific regulations apply. Planners are advised to become aware of where these standards exist.

“It is recommended that any proposed uses (sensitive and facility) be built outside the AOI of these facilities to avoid adverse effects related to significant air quality emissions.”

The document also states if the sensitive use cannot be located outside the AOI, the proponent needs to satisfy the municipality no adverse effects will result. A cumulative effects study is required of air contaminants. Planners are also to look at the cumulative effects mapping the Ministry has on benzene and benzo[a]pyrene and where action levels 2 and 3 apply greater scrutiny is to be exercised on how adverse effects are addressed.

For example: two steel plants in Hamilton are applying for alternative standards for benzo[a]pyrene. The steel plant AOI is 2 kms and the Class 3 and 2 action mapping levels apply to large residential urban areas between the plants and the Niagara Escarpment.

It is unclear how to address the scenario that exists because of the alternative standard setting scenarios that are available to industrial facilities where Ontario Regulation 419 applies.

3. The Ministry should clarify that the required Compatibility Study is to be prepared by the proponent.

The Guideline is not clear that the role of the municipality is to receive and review the Compatibility Study and to use the study to make planning decisions. It is also important to acknowledge that there could be situations where the proponent is the municipality so it would be required to both prepare and review the study.

4. The Ministry should provide clarification regarding the use of holding provisions as they relate to a Compatibility Study.

Holding provisions should only be applicable in cases where the principle of development has been established and should only be tied to implementation details. It would not be appropriate to apply holding provisions where the outcome of a Compatibility Study may preclude development of the lands for the intended zoned uses.

5. The Ministry should provide clarification around the “Demonstration of Needs” tests under the Guideline.

Strategic growth areas or nodes and corridors are not defined. As written, they could be interpreted too narrowly or too broadly, and it is not clear whether the intent is to include every major road or intersection within this definition.

More guidance could also be provided related to the reference to “designated and zoned specifically for the use” as part of the alternatives test.

There is also a risk that arguments based on “need” may be used to attempt to undermine the Guideline. Health and safety of the public should always be paramount to economic need. Further to this, the provisions around “where no alternative exists” should be revisited and the Ministry should consider recommending a regional scale evaluation of alternatives rather than a municipal.

6. The Ministry should provide as much data and training as possible to support planners and other professionals who implement the Guideline.

Many planning authorities lack resources to collect and maintain the necessary data to inform local planning decisions related to land use compatibility. An online portal, like the one developed by the Ministry of Agriculture, Food and Rural Affairs to assist with the preparation of Agricultural Impact Assessments should be contemplated. In addition, the Ministry should consider a robust training program in partnership with relevant organizations such as OPPI.

7. The Ministry should add professional planners and public health professionals to sections where qualified individuals are defined or referenced in the Guideline.

The Guideline currently only references professional engineers as examples of qualified individuals.

Engineers play an important role in relevant calculations but may not be adequately trained where public health and other adverse effects are concerned. The application of a qualified individuals designation needs to encompass all the requirements adverse impact analyses needs to consider. At a minimum that should include engineers, planners, and public health professionals.

The qualified professionals who are professional planners and public health professionals should also be defined in a separate Ontario regulation similar to the definitions of Professional Engineers and Professional Geoscientists in O.R. 153/04

8. The Ministry should provide details on when the Guideline will come into effect and any related information on transitional considerations.

There is no information provided on when the Guideline is to come into effect. Many municipalities are currently undergoing Municipal Comprehensive Reviews to meet the legislated deadline for implementing *A Place to Grow* next year. It is important that further details be provided by the Ministry, in consultation with the Ministry of Municipal Affairs and Housing, on when these measures are anticipated to come into effect as there are implications for Land Needs Assessments and evaluation of other matters, such as employment land conversion requests.

The Ministry should also provide further direction on how to address situations where there are existing uses and development approvals in place within the expanded AOI and MSD, as well as the applicability of the Guideline at various stages of the approval process. As an example, for a mixed-use site, could the as-of-right sensitive use be denied by refusing to approve a Site Plan application based on not satisfying the demonstration of need and alternatives test?

OPPI would also like to raise a fundamental consideration as the Ministry proceeds to finalize the Guideline. The proposed Guideline significantly increases minimum separation distances for many categories of use. This could have an effect on some of the core considerations and principles involved in planning including intensification, settlement boundaries, active transportation, greenhouse gas emission and complete communities. The consequence of the Guideline on these elements should remain top of mind as the Guideline is being finalized.

OPPI would be pleased to continue engagement with the government on the development of the proposed Land Use Compatibility Guideline. If you have any questions on our submission, please feel free to contact me at 647-326-2328 or by email at s.wiggins@ontarioplanners.ca.

Sincerely,



Susan Wiggins, CAE, Hon IDC
Executive Director
Ontario Professional Planners Institute